REVENUE LAWS STUDY COMMITTEE

REPORT TO THE 2007 GENERAL ASSEMBLY OF NORTH CAROLINA 2008 SESSION

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

Senator John H. Kerr, III, Cochair ***Representative Paul Luebke, Cochair***

May 16, 2008

TO THE MEMBERS OF THE 2007 GENERAL ASSEMBLY:

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

2007-2008

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. Before it was created as a permanent legislative commission in 1997, the Revenue Laws Study Committee was a subcommittee of the Legislative Research Commission. It has studied the revenue laws every year since 1977. 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. The co-chairs for 2007-2008 are Senator John Kerr and Representative Paul Luebke.

In its study of the revenue laws, G.S. 120-70.106 gives the Committee 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.

In 2002, the General Assembly established a permanent subcommittee under the Revenue Laws Study Committee to study and examine the property tax system.[1] The subcommittee consists of eight members, four appointed by the Senate chair of the Revenue Laws Study Committee and four appointed by the House chair of the Committee. The subcommittee may recommend changes in the property tax system to the full Committee for its consideration in its final report to the General Assembly. Although the Property Tax Subcommittee did not meet during the 2007-2008 interim,

[1] S.L. 2002-184, s. 8.

an informal work group consisting of representatives from the Department of Revenue, the North Carolina Association of County Commissioners, the North Carolina Tax Assessors and Collectors Association, and the School of Government met several times on property tax issues.

COMMITTEE PROCEEDINGS

The Revenue Laws Study Committee met five times after the adjournment of the 2007 Regular Session of the 2007 General Assembly on August 2, 2007. Appendix B contains a copy of the Committee's agenda for each meeting. All of the materials distributed at the meetings may be viewed on the Committee's website: http://www.ncleg.net/committees/. The Committee received numerous requests from legislators, taxpayers, the Department of Revenue, and interest groups to study various issues of tax policy and tax administration. The Committee considered many issues but was unable to take up all of the issues suggested to it. 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 2007 GENERAL ASSEMBLY

The 2007 General Assembly enacted six of the Revenue Laws Study Committee's eight legislative proposals in whole or in part. Appendix C lists the Committee's recommendations and the action taken on them in 2007. A document entitled "**2007 Finance Law Changes**" summarizes all of the tax legislation enacted in 2007. It is available in the Legislative Library located in the Legislative Office Building. It may also be viewed on the Legislative Library's website: http://www.ncleg.net/LegLibrary under 'Studies and Reports,' 'Tax Law Changes (1996 – 2007)'.

CLASS ACTIONS

The Revenue Laws Study Committee has spent a significant amount of time examining the issue of tax class actions. In fact, this issue has been studied three times during the last six years. Prompted by requests from both the North Carolina Bar Association and the North Carolina Association of Certified Public Accountants, the Committee first examined this issue in 2002. At that time, these organizations were seeking an overall simplification of the tax refund process as well as clarification of the protest rule after the decision in the ***Bailey II*** case. As the result of its study, the Committee recommended a proposal that would have created a unified refund procedure.[1] Although no action was taken on the bill, it represented the first step toward simplifying and clarifying the refund procedure. The Committee tackled this issue again in 2006 as part of its broader, in-depth study of the procedures related to the review of disputed tax matters. In its report to the 2007 Regular Session of the 2007 General Assembly, the Committee recommended a proposal that substantially revised the entire administrative and judicial review process. Included in that proposal was a provision that would have limited tax class actions to only those taxpayers who filed with the Department of Revenue a written demand for a refund. When the proposal, introduced as Senate Bill 242 in the 2007 Regular Session, was discussed in the Senate Finance Committee, the Department requested that the class action provision be removed because of ongoing class action litigation. A study provision was substituted[2] directing the Revenue Laws Study Committee to study whether any legislative changes should be made regarding the use and scope of class actions to challenge the constitutionality of a tax in light of the forthcoming decision in ***Dunn v. State of North Carolina***. In December of 2007, the North Carolina Supreme Court affirmed the class certification in the ***Dunn*** case.

The Committee recognized that the decision to uphold the class certification in ***Dunn*** is indicative of the trend by the North Carolina courts with regard to tax class actions. Since 1998, the North Carolina courts have eroded, if not obliterated, the former protest statute by allowing the claim of one taxpayer to stand for the claims of

[1] Senate Bill 228, 2003 Regular Session.
[2] Section 45 of S.L. 2007-491.

all similarly situated taxpayers despite the protest statute's requirement that taxpayers must file a claim for refund as a prerequisite to becoming a party to a lawsuit challenging the legality of a tax. The Committee determined that the current law needs to be clarified since the recent court cases undermine the plain wording and intent of the now-repealed protest statute and since Senate Bill 242 was silent on tax class actions. The Committee identified as the purpose of the clarification to identify and protect the potential liability of the State for tax refunds and to give taxpayers, the Department, and practitioners clear guidance as to the proper procedure governing class actions. To this end, the Committee recommends Legislative Proposal #1, *Procedure for Tax Class Actions.* The Committee noted that the proposal may require additional changes as the bill progresses during session in light of comments it receives from interested parties.

Legislative Proposal 1 would require a taxpayer seeking to join a pending class action to obtain a refund of tax paid due to an unconstitutional statute to file a claim for refund with the Department. The claim for refund must specify that the sole basis for the claim is to obtain a refund of tax paid due to an unconstitutional statute, to identify the alleged unconstitutional statute, and to identify the pending class action of which the taxpayer seeks to become a member. A taxpayer making a valid refund claim under this new provision would not be required to exhaust the administrative review process. When a class action refund claim is filed, the Department would be required to send a copy of the claim to the court in which the class action is pending. The statute of limitations for filing of a class action refund claim would be tolled for any taxpayer who, at the time the class action was commenced, could timely file a claim for refund.

IRC UPDATE

North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the Code.[3] The General Assembly determines each year whether to update its reference to the Code.[4] Updating the reference makes recent amendments to the Code applicable to the State to the extent that State law previously tracked federal law. The current reference to the Code is January 1, 2007. Since that date, Congress enacted three pieces of legislation that made changes to the Code. The federal legislation includes the Small Business and Work Opportunity Tax Act of 2007 (P.L. 110-28) signed into law on May 25, 2007, the Mortgage Forgiveness Debt Relief Act of 2007 (P.L. 110-142) signed into law December 20, 2007, and the Economic Stimulus Act of 2008 (P.L. 110-185) signed into law February 13, 2008.

The Committee began its discussion of conformity with an overview of the three federal acts. Specific attention was given to the Economic Stimulus Act (ESA) in light of the substantial fiscal impact conformity would have on State revenues. Among other changes, the ESA includes a 50% bonus depreciation provision and increased expensing limits for qualified property purchased and placed in service during 2008. The bonus depreciation provision allows a taxpayer to depreciate in the first year 50% of the adjusted basis of certain qualified property.[5] The expensing limit is almost doubled to $250,000, and the threshold for reducing the deduction is increased to $800,000 with a complete phase-out once qualifying purchases exceed

[3] North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

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

[5] The placed-in-service date is extended one year, through December 31, 2009, for property with a recovery period of 10 years or longer, for transportation property, and for certain aircraft.

$1.05 million.[6] The limitations will return to the lower levels for tax years beginning in 2009.

The fiscal impact on the State's General Fund of fully conforming to the ESA would be a combined loss of approximately $320 million for the 2008-09 and 2009-10 fiscal years. Of this loss to the General Fund, $300 million is associated with the 50% bonus depreciation provision. The increased expensing limits would reduce the State's General Fund by approximately $6.5 million for FY 2008-09 and $9.4 for FY 2009-10.

In deciding whether to conform to the federal changes, the Committee balanced the benefits of conformity, which include improved compliance, tax simplicity, and ease of administration, against the General Assembly's responsibility to provide the necessary revenues to support the State's budget. In light of the cost of conformity and the unknowns associated with the budget outlook, the Committee recommended Legislative Proposal 2, *IRC Update*. The proposal would update the Code reference to May 1, 2008, and conform to all of the federal changes, with the exception of the bonus depreciation provision in the ESA. The proposal would delay the impact of that provision in a manner similar to the approach North Carolina took several years ago when Congress previously enacted bonus depreciation provisions. Under this proposal, taxpayers would be required to add back to federal taxable income for purposes of determining State net income 85% of the depreciation amount taken with corresponding deductions taken over the next five years in equal installments.

CORPORATE TAX LAW CHANGES

The Revenue Laws Study Committee considered three changes to the corporate tax laws. The Department of Revenue requested the Committee to review two

[6] The new law does not alter the section 179 limitation imposed on sport utility vehicles, which have an expense limit of $25,000.

franchise tax issues and the Association of Publicly Traded Companies asked the Committee to review a corporate tax reporting and withholding requirement.

North Carolina's franchise tax does not apply to limited liability companies (LLC) because the definition of a corporation, for franchise tax purposes, does not include a LLC. Since 2001, the General Assembly has spent time protecting its franchise tax base from tax planning strategies whereby a corporation could avoid paying franchise tax on its assets by transferring them to an affiliated LLC. In 2006, the General Assembly amended the definition of 'corporation', as it applies to the franchise tax statutes, to include a LLC that elects to be taxed as a C corporation for federal income tax purposes. The Department began to receive questions from S corporations as to whether they could convert to an LLC and elect to be treated as S corporations for income tax purposes, and thereby be exempt from paying franchise tax. In 2005, S corporations paid more than $50 million in franchise tax. Section 1 of Legislative Proposal 3, *Corporate Tax Law Changes*, addresses this potential tax avoidance strategy by providing that a LLC that elects to be treated as a corporation for income tax purposes, either a C corporation or a S corporation, is considered a corporation for franchise tax purposes.

In 2007, the General Assembly limited a corporation's ability to use captive real estate investment trusts (REITs) to avoid State corporate income taxes by disallowing the dividend paid deduction when a REIT is a captive REIT. The effect of this change is that a captive REIT is treated as a regular corporation for income tax purposes. Under the current franchise tax law, a REIT may, in determining its value for franchise tax purposes, deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies or governments. Section 3 of Legislative Proposal 3, *Corporate Tax Law Changes*, would make a similar change to the franchise tax statutes that the General Assembly made last session to the income tax statutes by providing that this deduction may only be used by a REIT that is not a captive REIT.

A partnership doing business in this State must file an information return with the Department of Revenue that gives the name and address of each person who would be entitled to share in the partnership's net income, if distributable, and the amount each person's distributive share would be. A partnership that files a report must also furnish to each partner the information needed by that partner to file a North Carolina income tax return. For nonresident members of a partnership, the partnership must pay income tax for that partner based on the partner's distributive share.

A publicly traded partnership (PTP) is a limited partnership the interests in which are traded on stock exchanges such as the New York, American, and NASDAQ exchanges. Unlike a traditional partnership, a PTP has tens of thousands, and sometimes hundreds of thousands, of unitholders. A PTP's unitholders can change daily in trades on public exchanges. PTPs initially came into existence during the 1980s as a means for companies to raise large amounts of capital that are used to build or buy capital-intensive assets, like pipelines.

Section 4 of Legislative Proposal 3, *Corporate Tax Law Changes,* would change the reporting and payment requirements that apply to PTPs that qualify as a PTP under section 7704(c) of the Internal Revenue Code. Under section 7704(c) of the Code, a PTP may be treated like a partnership rather than a corporation for income tax purposes if it meets the 'qualified income test' under section 7704(c) of the Code: a PTP must generate 90% of its income from qualified sources. Qualified sources include real estate activities, mineral or natural resources activities like exploration, production, mining, refining, marketing, and transportation of oil, gas, minerals, geothermal energy, and timber. Most PTPs that meet the section 7704(c) income restrictions are in energy-related or real estate-related businesses.

Section 4 of Legislative Proposal 3, *Corporate Tax Law Changes,* would require a qualifying PTP to report annually to the Department the partners in the PTP who received more than $500 of income rather than report the income received by every partner. It would also exempt qualifying PTPs from the requirement to pay tax on the partnership income received by a nonresident. In making these changes, the bill seeks to strike a balance between the costs and burden of compliance with the reporting requirements for both the PTPs and the Department and the benefits gained by compliance.

The Multi-State Tax Commission (MTC) adopted a model statute in December 2003 that exempts PTPs that qualify as a PTP under section 7704(c) of the Code from paying tax on partnership income received by a nonresident member so long as the PTP agrees to file an annual information return reporting the name, address, and taxpayer identification number of each unitholder with an income in the state in excess of $500. This proposal adopts the substance of the MTC model statute.

ESTATE AND GIFT TAX LAWS

The Revenue Laws Study Committee recommended legislation to the 2007 General Assembly to reform the State's gift tax to more closely conform it to the federal tax,[7] but the General Assembly did not enact the bill. North Carolina is one of only three states that imposes a gift tax. North Carolina's gift tax is not unified with its estate tax and the gift tax rate differs based on the relationship between the donor and donee. The State receives an average of $18 million annually from gift tax revenues. The revenue loss associated with simplifying the gift tax laws is not quantifiable.

During the 2007 Session, the Estate and Gift Tax Section of the North Carolina Bar Association raised concerns about the application of the gift tax simplification. The Estate and Gift Tax Section worked with the Department of Revenue and

[7] House Bill 235, *Simplify Gift Tax.*

Committee staff to address these concerns. The Committee continues to recognize the need to simplify the State's gift tax laws. However, the Committee did not want to recommend legislation that would reduce General Fund revenues.

The Committee learned that a case has been filed in Mecklenburg County, ***Stowe v. Department of Revenue***, to recover North Carolina estate taxes imposed on property located in South Carolina. The plaintiffs argue in their complaint that the formula for calculating North Carolina estate tax due when property is located in more than one state is unconstitutional because it provides less than a full reduction of the tax attributable to the out-of-state property when the other state does not impose an estate tax, or imposes an estate tax less than the prorated federal credit amount. Legislative Proposal 4, *Modify Estate Tax Law,* would modify the formula for calculating North Carolina estate tax on estates that include property located in another state by excluding the value of that property from the estate tax payable to North Carolina. The proposal would become effective when it becomes law and would apply retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired as of December 28, 2007.

PROPERTY TAX PROPOSALS

The Revenue Laws Study Committee directed staff to address any needed changes to the property tax circuit breaker deferral program (S.L. 2007-497) and to review several property tax proposals in Senate Bill 1309, introduced last session but not enacted. The proposals in Senate Bill 1309 included shortening the property tax revaluation period from an octennial schedule to a quadrennial schedule and providing for a property tax lien on mobile homes listed as personal property. Staff met six times with representatives from the Department of Revenue, North Carolina Association of County Commissioners, North Carolina Tax Assessors and Collectors Association, and the School of Government to discuss these issues and to make recommendations to the Committee. Representatives from the North Carolina Farm Bureau joined the working group for its last two meetings to discuss ownership problems with farmland assessed and appraised at its present-use value for property tax purposes. Members of the Committee received comments from constituents regarding the complexities and perceived unfairness of the ownership requirements for qualified farmland. The working group looked at ways to remedy these concerns. Finally, the Committee looked at different ways to tax short-term rentals of heavy equipment. During the 2007 Session, House Bill 1895 authorized the Committee to study the issue of whether to impose a gross receipts tax on heavy equipment property rentals in lieu of a property tax on the equipment. The bill is currently in the Senate Finance Committee.

Based on its review of these property tax issues, the Committee recommends two property tax proposals. Legislative Proposal # 5, *Deferred Property Tax Programs Changes,* would modify the circuit breaker tax benefit as recommended by representatives from the Department of Revenue, the School of Government, and the North Carolina Association of Tax Assessors and Collectors. The circuit breaker program is a property tax deferral benefit for North Carolina residents who have owned and occupied property in the State as a permanent residence for at least five years and who are at least 65 years of age or totally and permanently disabled. Beginning in the FY 2009-2010, an owner who meets the requirements of the circuit breaker benefit and makes less than the income eligibility limit of the homestead exclusion may defer the portion of taxes imposed on the permanent residence that exceeds 4% of the owner's income. If an owner makes between the income eligibility limit and one and one-half times the income eligibility limit, the owner may defer the portion of taxes imposed on the permanent residence that exceeds 5% of the owner's income. The deferred taxes become due when one of the following disqualifying events occurs: death of the owner, transfer of the residence by the owner, or cessation of use of the residence as a permanent residence by the owner. Legislative Proposal #5 would make four modifications to the circuit breaker program to ease its administration and implementation:

- The proposal would transfer the responsibility for notifying qualifying owners of the cumulative amount of the deferred taxes, including interest, from the tax assessor to the tax collector;
- The proposal would increase uniformity regarding when collection remedies become available to a taxing unit following a disqualifying event;
- The proposal would convert the application process from a one-time application to an annual application; and
- The proposal would create an exception to the general prohibition regarding access to public records that contain information about a taxpayer's income in order to allow agents of a county to disclose the amount of property taxes due and deferred on a property tax receipt.

Next, Legislative Proposal #6 would create a new statute setting out uniform provisions for the payment of deferred property taxes under the following programs: historic district property held as a future site of historic structures, the circuit breaker tax deferral program, nonprofit property held as future site of low- or moderate-income housing, present-use value property, working waterfront property, and historic property. The uniform provisions are intended to reduce redundant statutory language and to eliminate disparity in terminology and administration.

Legislative Proposal #6 would also create a second statutory section that collects and simplifies the current statutes governing when and against whom a taxing unit may utilize enforced property tax collection remedies. Finally, Legislative Proposal #6 would make various technical corrections, including a correction regarding the income eligibility limit of the property tax homestead exclusion.

Legislative Proposal #6, *Property Tax Modifications,* would make three changes to the property tax laws. Part I of the proposal would change the staggered octennial schedule for general reappraisals of property to a staggered quadrennial schedule and would eliminate horizontal adjustments beginning in 2011. This change would provide that the appraised value of property for tax purposes more closely approximates its market value. Horizontal adjustments would be eliminated for practical reasons, since these adjustments are not utilized by the counties.

Part II of the proposal would treat mobile home liens the same as tax liens on other homes by providing that a tax lien attaches to a mobile home listed as personal property and to all real property of the taxpayer in the taxing unit on the date the mobile home is listed. This change would remedy the problem that often occurs when a mobile home listed as personal property is sold or moved, and property taxes are due on the property. The whereabouts of the former owner are often unknown, and current law provides no recourse against the new owner of the mobile home.

Part III of the proposal would modify the ownership requirements of farmland appraised and assessed at its present-use value (PUV) in order to reflect common forms of land ownership used in modern estate planning. Under current law, eligible farmland may be owned by an individual person, tenants in common, trusts, or certain business entities. However, the make-up of these owners does not reflect modern estate planning. For example, all members of an eligible business entity must be individuals. This requirement would prevent farmland from being in the PUV program if it is owned by individuals and a trust created by the individuals naming their children as beneficiaries of the trust. Part III of the proposal would expand the membership of a qualified business entity to include trusts and other business entities, expand the beneficiary of a qualified trust to include a business entity, and expand tenants in common to include a trust. Part III would clarify that an individual may be a direct or indirect member of a qualified business entity or a direct or indirect beneficiary of a qualified trust. The individual must continue to be actively engaged in the farming operation or a relative of an individual who is actively engaged in the operation. Part III also would clarify that a qualified business does not include a corporation whose shares are publicly traded or that has a member that is a corporation whose shares are publicly traded. Finally, Part III would allow property to remain in present-use value if deferred taxes are paid at the time of the property's transfer to a new owner, and the new owner continues to farm the land and files a timely application for PUV status.

Legislative Proposal #9, *Tax on Short-term Heavy Equipment Rentals,* would repeal the property tax levied on heavy equipment owned and offered for short-term rental or lease by a person whose principal business is the short-term lease or rental of heavy equipment at retail, and would authorize counties and cities to levy a local option gross receipts tax on the short-term rentals or leases. The rate to be applied by the counties is one and one-tenths percent (1.1%), and the rate to be applied by the cities is one and seventy-five one hundredths (1.75%). The gross receipts tax would apply to the short-term rental or lease of earthmoving or construction equipment that meets any of the following requirements:

- It is a self-propelled vehicle that is not designed to be driven on the highway.
- It is industrial lift equipment, industrial material handling equipment, industrial electrical generation equipment, or similar piece of industrial equipment.
- It is an attachment or an accessory for a vehicle or piece of equipment described above.

EXEMPT DISASTER ASSISTANCE DEBIT SALES

The American Red Cross (ARC) asked the Revenue Laws Study Committee to consider whether purchases made by disaster victims using a debit card issued to the victim by the ARC should be exempt from sales tax in the same manner that purchases made by disaster victims using disbursing orders issued by the ARC are exempt. In the past, the ARC provided disaster assistance relief by giving disaster victims a disbursing order to purchase items that the victim needed. Over the last few years, the ARC began giving disaster victims debit cards to use when purchasing these same items. The ARC began using debit cards because it believes they are more efficient, effective, and less bureaucratic for the victim and require less administrative effort and expense for the organization. However, there is a significant difference between using a debit card and a disbursing order for purposes of the sales tax exemption. When a debit card is used, the disaster victim is the purchaser. When a disbursing order is used, the ARC is the purchaser. Current law exempts purchases made by the ARC from sales tax, but not purchases made by disaster victims.

Legislative Proposal 7, *Exempt Disaster Assistance Debit Sales,* would exempt from sales tax tangible personal property purchased with a client assistance debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality. The ARC is an instrumentality of a federal agency. The ARC client assistance card clearly identifies itself as one issued by the ARC. The ARC has the ability to see from its reports of the card's use the amount purchased and the store from which the goods were purchased. Unlike the old disbursing order system, the ARC does not have a cash register receipt describing the specific items purchased. The client assistance card authorization form is a contract between the ARC and the disaster victim. The contract stipulates the types of items the card may be used to purchase. In the event of inappropriate purchases, the card can be suspended.

TECHNICAL, ADMINISTRATIVE, AND CLARIFYING CHANGES

The Revenue Laws Study Committee recommends Legislative Proposal 8, *Revenue Laws Technical, Administrative, and Clarifying Changes.* This proposal would make several technical and clarifying changes to the revenue laws and related statutes, many of which were recommendations of the Department of Revenue.

The proposal incorporates changes recommended by the Committee regarding the Work Opportunity Tax Credit as enacted by the 2007 Appropriations Act (S.L.

2007-323). The credit is equal to 6% of the federal Work Opportunity Tax Credit. The credit is granted to employers based on wages paid to newly hired individuals who are members of certain targeted groups including qualified veterans, TANF recipients, and ex-felons. The Committee considered how the federal credit and similar credits in other states are implemented. In particular, the Committee discussed ways in which to narrow the credit to provide the maximum benefit to employers. The Committee recommended modifying the credit by limiting its applicability to wages paid during the taxable year for positions located in this State and by creating a sunset for the credit.

This proposal also includes changes to the following acts or provisions enacted last year:

- Reform Tax Appeals (S.L. 2007-491)
- Medicaid swap (Section 31.16 of S.L. 2007-323)
- Coordinate Statewide Enhanced 911 System (S.L. 2007-383)

TAX CREDITS

Tax credits are considered a mechanism for encouraging and rewarding behavior that is beneficial to the State. Like appropriations, tax credits are expenditures of public funds for the benefit of certain businesses, interest groups, and other taxpayers. However, unlike appropriations, without some limitation, they can continue in perpetuity costing the State millions of dollars without review by the General Assembly. It was for this reason that in 1998, the Revenue Laws Study Committee recommended that sunsets be placed on virtually all tax credits as a means to review and reevaluate those credits. The thought was that periodic review would allow the General Assembly to consider each credit on its merits to determine whether it continues to serve a public purpose that justifies its cost.

To this end, the Committee reviewed five credits this interim, four of which are due to expire either this year or next year, and one with no sunset. After the Committee was provided with an overview of each of the credits, advocates were given an opportunity to express their support for extending the sunsets. The North Carolina Technology Association (NCTA) and the North Carolina Biosciences Organization expressed their support for extending the sunset on the credit for research and development. A copy of NCTA's letter supporting the extension is attached as Appendix D. The North Carolina State Ports Authority submitted a letter in support of extending the State Ports tax credit and a document explaining the rationale for the credit, which are attached as Appendix E and Appendix F. Gregg Thompson, representing the National Federation of Independent Businesses, spoke in favor of extending the credit for small business employee health benefits. The Committee recommended extending each of these three credits. Those extensions are found in the attached Legislative Proposal #10, *Extend Credit for Research and Development*; Legislative Proposal #11, *Extend State Ports Tax Credit*; and Legislative Proposal #12, *Extend Credit for Small Business Health Benefits.*

With regard to the credits for recycling facilities, the Committee heard from Johnny Jacobs, comptroller for the Nucor Steel Corporation, and Stewart Dickinson from the Department of Commerce. Nucor is the primary beneficiary of these credits. Mr. Jacobs spoke in favor of extending the sunset on the credit for reinvestment and submitted written documentation, attached as Appendix G, outlining the company's history, statistics on the number of jobs created and dollars invested, and the amount of its transportation costs for the last several years. Mr. Dickinson stated that the Department also supports the extension of the credit.

Of the two credits related to recycling facilities, the Committee spent most of its time discussing the credit for reinvestment. The Committee was apprised of the statutory requirement that the facility use the proceeds of the credit, if economically feasible, to reinvest in rail, road, or water system infrastructure as a means of ultimately reducing the facility's transportation costs due to its lack of deep-water access. The Committee learned that while the facility did make a number of infrastructure investments in the early years of the credit, including the extension of rail service and the building of an elaborate port facility, there have been few economically feasible opportunities in recent years. Instead, Nucor has invested the proceeds in the facility itself. The Committee had a number of questions, including whether feasible opportunities for infrastructure reinvestment will ever exist in that area, whether other companies have benefited from the infrastructure improvements that have been made, and whether the credit should be modified to more accurately reflect the current use of the credit. The Committee resolved to endorse a proposal, attached as Legislative Proposal #13, *Sunset Recycling Facility Credits,* that would extend the sunset on the credit for reinvestment and place a sunset on the credit for investment with the caveat that the questions raised by the Committee would need to be answered when the bill is considered during session.

VIDEO PROGRAMMING AND PEG CHANNEL SUPPORT

The Revenue Laws Study Committee recommended legislation to the 2006 General Assembly to establish uniform taxes for video programming services by applying the combined general rate of sales tax to all video programming services and repealing the local authority to impose a local franchise tax. The General Assembly enacted that proposal in S.L. 2006-151. As part of that legislation, it provided a State franchise process for cable service providers, in lieu of the prior locally-negotiated franchise agreements. It preserved the local government revenue stream by distributing part of the sales tax revenues from telecommunications and video programming services to the counties and cities. The distribution formula is based upon the amount of cable franchise tax imposed during the first six months of fiscal year 2006-2007 plus any subscriber fees imposed during that same period. The legislation also provided support for Public, Educational, and Governmental (PEG) channels provided to a county or city by allocating $2,000,000 of the revenue distributable to local governments for supplemental PEG channel support[8]; by establishing a PEG Channel Grant Program[9]; and by requiring a county or city to use a portion of its local shared tax revenue from the sales tax on video programming for PEG channel operation and support.[10]

The change from locally-negotiated franchises to a State 'notice only' franchise tax process hoped to promote competition in the video programming marketplace, and thereby encourage the deployment of broadband as a basic communication tool. The 2006 legislation directed the Revenue Laws Study Committee to review the effects of the new law on the following issues to determine if any changes to the law are needed:

- Competition in video programming services.
- The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.
- The deployment of broadband in the State.

The Committee heard presentations from representatives of cable providers and telecommunications companies at its April 2, 2008, meeting. The passage of the 2006 legislation encouraged the telecommunications industry to begin investing in the communications infrastructure of the State. Currently, there are 148 cable systems in the State operated by cable providers. Those systems serve 966 communities and approximately 1.9 million cable subscribers. The Committee determined that not enough time had elapsed since the legislation became effective in 2007 to see if the legislation has accomplished these purposes.

[8] G.S. 105-164.44I(b).
[9] G.S. 66-359.
[10] G.S. 105-164.44I(e).

As part of the transition from locally-negotiated franchise contracts to a State franchise, the responsible party for responding to consumer complaints needed to change from local governments to the State government. The legislation designated the Consumer Protection Division of the Attorney General's Office as the responsible party for State-issued franchises. The 2006 legislation directed the Attorney General's Office to report annually to the Revenue Laws Study Committee on its experiences with cable customers. The Consumer Protection Division (CPD) of the Attorney General's Office reported at the Committee's April 2, 2008, meeting that there were 118 State-issued franchises as of March 26, 2008. For the time period January 1, 2007, to March 26, 2008, the CPD received 60 written complaints against companies with a State-issued franchise. Most of those complaints involved allegations of unsatisfactory service or repair or alleged billing errors. The CPD attempts to mediate resolutions by sending the complaints to the cable company for a response; it also tracks responses to see if consumers are satisfied and to determine if the complaints show patterns that may warrant further investigation.

At its April 2, 2008, meeting the Committee also heard presentations from the League of Municipalities, the e-NC Authority, and the Southeast Association of Telecommunications Officers & Advisors. The League of Municipalities asked the Committee to clarify the distribution of the $2,000,000 supplemental PEG support funding. That revenue is distributed to counties and cities with qualifying PEG channels. At the time the General Assembly considered the legislation in 2006, the information the staff had collected indicated that there would be 36 qualifying PEG channels. There were 276 certified PEG channels in the March 2008 distribution. The recommendation proposed by the League would not drastically reduce the number of channels receiving a distribution, but it should result in the allocations being received by the qualifying PEG channels. Legislative Proposal 14, *Supplemental PEG Support*, contains the League's proposal. The Committee voted to recommend the proposal to the 2008 Session of the 2007 General Assembly so that the issue could be considered this session. The members asked the interested parties to continue working together to reduce the number of PEG channels eligible for the supplemental PEG funding.

The e-NC Authority recommended changes to the PEG Channel Grant Fund that it administers. The purpose of the Fund is to provide matching grants to counties and cities for PEG channel support. The revenue in the Fund consists of revenue allocated to it under G.S. 105-164.44I(b) and any other revenues appropriated to it. In 2007, the General Assembly appropriated $1,000,000 the Fund. The e-NC Authority awarded $572,000 in grants in December 2007. Thirty PEG channels received a grant. The majority of the grant money was used to purchase equipment and software to help the channels meet the federally-mandated transition to digital broadcasting by February 17, 2009. The e-NC Authority recommended that it be allowed to retain up to 3% of the Fund, not to exceed $60,000 annually, to cover its expenses in grant letting and monitoring; that the dollar-for-dollar match requirement be reduced and varied depending upon the development tier of the grant applicant; and that a county or city applying for a grant be allowed to vest ownership in the capital expenditure purchased with the grant monies with the operator of the PEG channel. The Committee did not choose to recommend these changes to the 2008 Session of the 2007 General Assembly.

The Southeast Association of Telecommunications Officers & Advisors represents many of the PEG channel operators. The Association asked the Committee to consider modifying the laws relating to the State franchises for cable service providers, the PEG Channel Grant Program, and the local government allocations for PEG channel operation and support from the distributions it receives from the sales tax on video programming. Its recommended changes included a definition of 'PEG channel operator' and 'basic service tier', a requirement that the local government allocation for PEG channel support be proportionate to the level of support given in fiscal year 2006-07, and an expansion of the PEG Channel Grant Program to add PEG channel operators to the list of permissible applicants. The Committee did not choose to recommend these changes to the 2008 Session of the 2007 General Assembly. The Committee noted that the provisions relating to the distribution of tax-shared revenue could be added to Legislative Proposal 14, *Supplemental PEG Support*, during the 2008 Session of the 2007 General Assembly.

COMMITTEE RECOMMENDATIONS
AND LEGISLATIVE PROPOSALS

The Revenue Laws Study Committee makes the following fourteen recommendations to the 2008 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.

1. Procedure for Tax Class Actions
2. IRC Update
3. Corporate Tax Law Changes
4. Modify Estate Tax Law
5. Deferred Property Tax Programs Changes
6. Property Tax Modifications
7. Exempt Disaster Assistance Debit Sales
8. Revenue Laws Technical, Clarifying, & Administrative Changes
9. Tax on Short-Term Heavy Equipment Rentals
10. Extend R & D Credit
11. Extend State Ports Tax Credit
12. Extend Small Business Health Benefits Credit
13. Sunset Recycling Facility Credits
14. Supplemental PEG Support

LEGISLATIVE PROPOSAL #1

PROCEDURE FOR TAX CLASS ACTIONS

LEGISLATIVE PROPOSAL #1

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO ESTABLISH A PROCEDURE FOR TAXPAYERS TO JOIN A CLASS ACTION SEEKING A REFUND OF TAX PAID DUE TO AN UNCONSTITUTIONAL STATUTE.

SHORT TITLE: Procedure for Tax Class Actions.

SPONSORS:

BRIEF OVERVIEW: This proposal establishes a procedure for taxpayers seeking to join a class action in order to obtain a refund of an unconstitutional tax.

FISCAL IMPACT:

EFFECTIVE DATE: This act would become effective when it becomes law and applies to actions filed on or after that date.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U **D**

BILL DRAFT 2007-SVz-22 [v.11] (04/23)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/6/2008 9:39:57 AM

Short Title:	Procedure for Tax Class Actions.	(Public)
Sponsors:	.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE FOR TAXPAYERS TO JOIN A CLASS ACTION SEEKING A REFUND OF TAX PAID DUE TO AN UNCONSTITUTIONAL STATUTE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 105 is amended by adding a new section to read:

"**§ 105-241.18. Class actions.**

(a) Requirements. – A taxpayer must meet the requirements set out in G.S. 105-241.17 to bring a class action seeking the refund of a tax paid due to an unconstitutional statute. A taxpayer who wants to become a member of a pending class action seeking the refund of a tax paid due to an unconstitutional statute must comply with all of the requirements in this section. A taxpayer who does not meet all of these requirements is not eligible for inclusion in the class. The requirements are:

(1) File a claim for refund in accordance with G.S. 105-241.7.

(2) Specify in the claim for refund that the sole basis for the claim is to obtain a refund of a tax paid due to an unconstitutional statute and identify the statute that is unconstitutional. If the taxpayer's claim for refund includes another basis, that basis is not subject to review unless the taxpayer files a separate claim for refund on that basis in accordance with G.S. 105-241.7.

(3) Specify in the claim for refund that the taxpayer seeks to become a member of a pending class action seeking the refund of a tax paid due to an unconstitutional statute and identify the pending class action.

(b) Procedure. – The procedures in G.S. 105-241.11 through G.S. 105-241.17 for administrative and judicial review of a request for refund and a proposed denial of a request for refund do not apply to a claim for refund that meets the requirements of this section. The Department must send a copy of a claim for refund that meets the requirements of this section to the court in which the class action specified in the claim is pending. The Department must wait for direction from the court to take any other action on the claim for refund.

(c) Statute of Limitations. – The statute of limitations for filing a claim for refund is tolled for a taxpayer who could timely file a claim for refund on the date a class action commences seeking the refund of a tax paid due to an unconstitutional statute. A class action is considered to commence on the earlier of the date a complaint or motion is filed in a civil action seeking certification of a class. The statute of limitations is tolled for the limited purpose of giving a taxpayer an opportunity to become a member of the class action by filing a claim for refund that meets the requirements of this section. The statute of limitations for filing a claim for refund is not tolled for any other purpose.

The tolling of the statute of limitations under this section for filing a claim for refund ends when a court enters any of the following in a class action:

(1) A final order denying certification of the class.
(2) A final order dismissing the class action without an adjudication on the merits.
(3) A final judgment on the merits."

SECTION 2. G.S. 105-241.19 reads as rewritten:

"**§ 105-241.19. Declaratory judgments, injunctions, and other actions prohibited.**

The remedies in G.S. 105-241.11 through G.S. ~~105-241.17~~ 105-241.18 set out the exclusive remedies for disputing the denial of a requested refund, a taxpayer's liability for a tax, or the constitutionality of a tax statute. Any other action is barred. Neither an action for declaratory judgment, an action for an injunction to prevent the collection of a tax, nor any other action is allowed."

SECTION 3. This act is effective when it becomes law and applies to actions filed on or after that date.

DRAFT 2007-SVz-22: Procedure for Tax Class Actions

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	May 7, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:	Draft Proposal		Committee Counsel

SUMMARY: ***This proposal establishes a procedure for taxpayers seeking to join a class action in order to obtain a refund of an unconstitutional tax.***

BILL ANALYSIS: This proposal does not change the current law with regard to a taxpayer who wishes to commence a class action challenging the constitutionality of a tax. That taxpayer must exhaust the administrative review procedures prior to filing suit. This proposal sets out the procedure for a taxpayer seeking to become a member of a class action once that lawsuit has already been filed. In order to join a class action, a taxpayer would be required to do the following:

- File a claim for refund with the Department of Revenue.
- Specify that the sole basis for the claim for refund is the unconstitutionality of a statute and identify the alleged unconstitutional statute. If a taxpayer's claim for refund includes a basis other than the facial unconstitutionality of a statute, then the taxpayer must file a separate claim for refund.
- Specify the pending class action to which the taxpayer seeks to become a member.

A taxpayer seeking to join a class action who properly files a claim for refund would not be required to exhaust the administrative and judicial review process. Once the claim is filed, the Department would be required to notify the court in which the class action is pending by sending it a copy of the claim for refund.

The statute of limitations for filing a claim for refund is tolled for any taxpayer who, at the time the class action was commenced, could have filed a timely claim for refund. However, the statute of limitations is tolled only for the limited purpose of giving the taxpayer an opportunity to become a member of the class action. A class action is considered to commence on the earlier of the date a complaint or motion is filed in a civil action seeking certification of a class. The tolling ends when the court enters any of the following:

1. A final order denying certification of the class.
2. A final order dismissing the class action without an adjudication on the merits.
3. A final judgment on the merits.

EFFECTIVE DATE: This act is effective when it becomes law and applies to actions filed on or after that date.

CURRENT LAW & BACKGROUND: The current law regarding tax class actions is a complex amalgamation of conflicting common law legal principles, statutes, and judicial interpretation. The intersection of these principles and laws provide little guidance to the Department, taxpayers, or practitioners as to the proper procedure for seeking the refund of an unconstitutional tax.

Prior to the enactment of SB 242 in 2007, the "protest statute" was the relevant statute for class action purposes. For over 80 years, it provided the authority for and the procedural mechanism by which taxpayers could bring a lawsuit challenging the illegality of a tax. This statute required a taxpayer to pay the tax first, file a claim for a refund, and wait 90 days before filing suit. This statute was repealed by SB 242. However, it is still relevant to understanding the current law because it is the centerpiece of State judicial opinions in this area.

Until 1998, the law in North Carolina was well-settled with regard to the protest rule. North Carolina courts had consistently upheld the application of the statute as a procedural bar to relief if the requirements had not been met. In the *Bailey I* case, a group of State and local employees filed suit alleging impairment of contract as the result of legislative changes made to the taxation of retiree income. None of the plaintiffs had filed a protest. The North Carolina Supreme Court upheld the dismissal of the case for failure to comply with the procedural requirements of G.S. 105-267. The *Swanson* case involved a similar issue. In that case, the plaintiffs filed a "class demand letter" attempting to have one claim for refund stand for all claims. The North Carolina Supreme Court also upheld the dismissal of the case.

After the decision in *Bailey I*, the plaintiffs refiled their case and, this time, all of the plaintiffs had individually complied with the protest requirement. The Court reversed itself. In *Bailey II*, the Court found that not only were the plaintiffs who had filed a protest entitled to a refund, but all nonprotesters were entitled to a refund as well. The Court seemed most persuaded by the fact that the State had sufficient notice of its liability where there was an identifiable class of affected taxpayers consisting of all those State and local employees who had vested in the State retirement system as of August 12, 1989.

The *Smith* case was another class action lawsuit comprised of both protesters and nonprotesters challenging the intangibles tax. In that case, the North Carolina Supreme Court also held that the nonprotesters were entitled to relief as well as the protesters. However, the Court based its reasoning, not on the protest statute, but on the uniformity provision of the State Constitution.

Dunn is an ongoing case that has to do with the taxation of interest earned on out-of-state municipal bonds. In December of 2007, the North Carolina Supreme Court upheld the certification of a class that includes plaintiffs who have not filed a refund claim, who are of a different tax type than the named plaintiffs, and for tax years other than the years the plaintiffs are seeking a refund.

In the tax class actions that have been decided since 1998, the North Carolina courts have demonstrated a willingness to effectively allow the claim or protest of one taxpayer to stand for the claims of all similarly situated taxpayers despite the protest statute's requirement taxpayers must file a claim for refund as a prerequisite to becoming a party to a lawsuit challenging the legality of a tax.

With the passage of SB 242, the protest statute is repealed and a new statute is enacted setting out the conditions that must be met in order to file a lawsuit challenging the constitutionality of a tax statute, which includes obtaining a final determination from the Department and filing a contested case with the Office of Administrative Hearings. SB 242 did not make any express class action provision.

Given SB 242's silence and the trend over the last 10 years in our courts on this issue, this proposal is designed to provide clear guidance to the Department, taxpayers, and practitioners, consistent with the original intent of the protest statute, that each taxpayer seeking to become a member of a class action must file a claim for refund indicating that desire and identifying the specific class action.

2007-SMSVz-22

LEGISLATIVE PROPOSAL #2

IRC UPDATE

LEGISLATIVE PROPOSAL #2

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS.

SHORT TITLE: IRC Update.

SPONSORS:

BRIEF OVERVIEW: This proposal would update from January 1, 2007 to May 1, 2008, the reference to the Internal Revenue Code used in defining and determining certain State tax provisions. By doing so, North Carolina would conform to changes made by three federal acts, except that the bill would delay the impact of the bonus depreciation provision authorized by the Economic Stimulus Act. The three federal acts are as follows:

1) Economic Stimulus Act of 2008
2) Mortgage Forgiveness Debt Relief Act of 2007
3) Small Business and Work Opportunity Tax Act of 2007

FISCAL IMPACT: Based on the analysis of the Joint Committee on Taxation (JCT), there are three sections of this bill that would impact the State's General Fund revenues. They are the Sec. 179 expensing increases and the 50% bonus depreciation, which were both part of the Economic Stimulus Act, plus the Mortgage Debt Forgiveness Act. According to JCT analysis, the other sections of the IRC update are expected to have minimal or no impact on the General Fund.

The fiscal impact to the General Fund from partial conformity with the IRC update is based on JCT estimates on changes to federal taxes. The method used to determine the state fiscal impact begins with these JCT estimates. These estimates are calculated by federal fiscal year (October to October). Fiscal Research adjusts these numbers back to an approximate calendar year tax impact. Then the next step was to prorate the national numbers to the state impact. This adjustment involved two steps: accounting for the relative size of the state based on federal tax collections and then adjusting for the difference in federal and state marginal tax rates. This method is similar to that used by the Center for Budget and Policy Priorities (CBPP). Therefore, the tax year estimates were compared with estimates produced by CBPP and were found to be comparable in magnitude.

Once North Carolina's share of the JCT estimates were determined, state tax liability changes were estimated and then allocated to the appropriate fiscal year. In order to assess the impact of the 85% addback of the bonus depreciation contained in the Fiscal Stimulus Act, a series of depreciation schedules were developed. These depreciation simulations were used to determine the impact of the bonus depreciation with the adoption of an 85 percent addback rule and a 5 year carryforward for each fiscal year.

To estimate the impact of the Mortgage Debt Forgiveness Act, similar methodology as described above was used. The share of North Carolina's fiscal impact was calculated with a slight difference. Rather than use tax collection data, real estate activity was used as a means to determine the State's share of the JCT estimated revenue changes.

EFFECTIVE DATE: This act would become effective for taxable years beginning on or after January 1, 2008.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-SVxz-18 [v.5] (03/05)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/16/2008 2:36:37 PM

Short Title: IRC Update.	(Public)
Sponsors: .	
Referred to:	

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2007,~~ May 1, 2008, including any provisions enacted as of that date which become effective either before or after that date."

SECTION 2. Notwithstanding Section 1 of this act, any amendments to the Internal Revenue Code enacted after January 1, 2007, that increase North Carolina taxable income for the 2007 taxable year become effective for taxable years beginning on or after January 1, 2008.

SECTION 3. G.S. 105-130.5(a) reads as rewritten:

"(a) The following additions to federal taxable income shall be made in determining State net income:

…

(15) ~~The~~ For taxable years 2002-2005, the applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) or section 1400L of the Code, as set out in the table below. In addition, a taxpayer who was allowed a special accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the

earlier taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage is as follows:

Taxable Year	Percentage
2002	100%
2003	70%
2004	70%
2005 ~~and thereafter~~	0%

…"

SECTION 4. G.S. 105-130.5 (a) is amended by adding a new subdivision to read:

"(a) The following additions to federal taxable income shall be made in determining State net income:

…

(15a) The applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) of the Code for property placed in service after December 31, 2007, but before January 1, 2009. In addition, a taxpayer who was allowed a special accelerated depreciation deduction in taxable year 2007 for property placed in service during that period, and whose North Carolina taxable income for that year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's 2008 taxable year an amount equal to the applicable percentage of the deduction amount allowed in the 2007 taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage under this subdivision is eighty-five percent (85%).

…"

SECTION 5. G.S. 105-134.6(c) reads as rewritten:

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

…

(8) ~~The~~ For taxable years 2002-2005, the applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) or section 1400L of the Code, as set out in the table below. In addition, a taxpayer who was allowed a special accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the

earlier taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage is as follows:

Taxable Year	Percentage
2002	100%
2003	70%
2004	70%
2005 ~~and thereafter~~	0%

…"

SECTION 6. G.S. 105-134.6(c) is amended by adding a new subdivision to read:

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

…

"(8a) The applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) of the Code for property placed in service after December 31, 2007, but before January 1, 2009. In addition, a taxpayer who was allowed a special accelerated depreciation deduction in taxable year 2007 for property placed in service for that period, and whose North Carolina taxable income for that year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's 2008 taxable year an amount equal to the applicable percentage of the deduction amount allowed in the 2007 taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage under this subdivision is eighty-five percent (85%).

…"

SECTION 7. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

…

(21a) In each of the taxpayer's first five taxable years beginning on or after January 1, 2009, an amount equal to twenty percent (20%) of the amount added to taxable income in taxable year 2008 as accelerated depreciation under subdivision (a)(15a) of this section."

…"

SECTION 8. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

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

…

(17a) In each of the taxpayer's first five taxable years beginning on or after January 1, 2009, an amount equal to twenty percent (20%) of the amount added to taxable income in taxable year 2008 as accelerated depreciation under subdivision (c)(8a) of this section."

…"

SECTION 9. This act is effective for taxable years beginning on or after January 1, 2008.

DRAFT 2007-SVxz-18: IRC Update

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 30, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:			Committee Counsel

SUMMARY: This proposal would update from January 1, 2007, to May 1, 2008, the reference to the Internal Revenue Code used in defining and determining certain State tax provisions. By doing so, North Carolina would conform to changes made by three federal acts, except that the bill would delay the impact of the bonus depreciation provision authorized by the Economic Stimulus Act. The bill would become effective for taxable years beginning on or after January 1, 2008.

CURRENT LAW: North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the Code.[1] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[2] Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State law tracks federal law. The General Assembly's decision whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made. The current reference date is January 1, 2007.

BILL ANALYSIS: The proposal would change the reference date to May 1, 2008. By changing the reference date to May 1, 2008, the bill effectively incorporates into our State tax laws changes made by three federal acts, with one exception. The Economic Stimulus Act of 2008 (ESA) has three major components, only two of which impact State revenues: the 50% bonus depreciation provision and the increased expensing limit. The bill conforms to the increased expensing limit but delays the impact of the bonus depreciation provision. Additional detail on the nonconforming provision is provided below. The three federal acts are as follows:

- Economic Stimulus Act of 2008
- Mortgage Forgiveness Debt Relief Act of 2007
- Small Business and Work Opportunity Tax Act of 2007

<u>Economic Stimulus Act of 2008</u>

Enacted on February 13, 2008, the Economic Stimulus Act of 2008 (P.L. 110-185) is a $152 billion package designed to stimulate the economy through rebates for individual taxpayers and incentives for businesses. The rebates, which are technically "advance credit payments," do not impact State revenues and are not discussed in this analysis. The three business incentives are the 50% bonus depreciation provision for qualifying property placed in service in 2008, the increased limits for section 179

[1] North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

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

expensing of qualified property in 2008, and increased depreciation limits for "luxury" autos predominantly used for business.

***50% Bonus Depreciation Provision.* –** Depreciation is an income tax deduction that allows a taxpayer to recover the cost or other basis of certain property over several years. It is an annual allowance for the wear and tear, deterioration, or obsolescence of the property. Bonus depreciation allows a business to claim more of a deduction up front and spread the remainder out over the normal depreciation schedule. In other words, a taxpayer will recover the basis in the asset sooner than under prior law. However, over the life of the asset the taxpayer still receives the same benefit. Congress has used bonus depreciation several times to encourage business investment, specifically after September 11, 2001. The Jobs Creation and Worker Assistance Act of 2002 provided a 30% bonus depreciation allowance. The Jobs and Growth Tax Relief Reconciliation Act of 2003 extended the sunset and increased the amount to 50%.

Under the ESA, a taxpayer is entitled to depreciate in the first year 50% of the adjusted basis of certain qualified property placed in service during the 2008 calendar year.[3] To be eligible to claim bonus depreciation, property must be (1) eligible for the modified accelerated cost recovery system (MACRS) with a depreciation of 20 years or less; (2) water utility property; (3) off-the-shelf computer software; or (4) qualified leasehold property. Bonus depreciation is available for every item of tangible personal property, except inventory, property used outside the U.S., and property depreciated under the alternative depreciation system. Other than the computer software mentioned, it is not available for intangibles. If property is sold in the same year it is placed in service, no bonus depreciation is allowed.

►*BILL ANALYSIS*: The bill does not conform State law to the accelerated depreciation schedule allowed under the ESA. Over the life of an asset placed in service during 2008, taxpayers will be able to deduct the same amount of the asset's basis under both federal and State law; it is just that the timing of the deduction will differ. To accomplish this "decoupling" from the federal accelerated depreciation provision, the bill does two things:

- The taxpayer must add back to federal taxable income 85% of the accelerated depreciation amount (50%) in the year the accelerated depreciation is claimed for federal purposes. The add-back means that for State tax purposes, a taxpayer would deduct less in that tax year than the taxpayer would have deducted if the State conformed to the accelerated depreciation law.
- In tax years beginning on or after January 1, 2009, the taxpayer may deduct from federal taxable income the total amount of the add-back required for either the 2007 or 2008 tax year, divided into five equal installments. This means that for State tax purposes, a taxpayer would be allowed to deduct a greater depreciation amount in the outlying tax years – the normal depreciation amount plus 20% of the accelerated depreciation amount the taxpayer had to add back. The purpose of this recovery provision is to enable the taxpayer to have the same basis in assets for federal and State purposes. Without this deduction provision, a taxpayer would have a different basis in the depreciable asset for State and federal purposes and would have to keep separate books and records for State and federal purposes until the disposal of the asset. In effect, the add-back and subsequent deduction will affect the timing of the impact of bonus depreciation on the State but it will not increase or decrease the total amount of revenue the State receives over the affected years.

Increased Section 179 Expensing Limits - In general, a qualifying taxpayer may elect to treat the cost of certain property as an expense and deduct it in the year the property is placed in service instead of depreciating it over several years. This property is frequently referred to as section 179 property, after the relevant section in the Internal Revenue Code. To be eligible, the property must be tangible personal

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[3] The placed-in-service date is extended one year, through December 31, 2009, for property with a recovery period of 10 years or longer, for transportation property, and for certain aircraft.

property which is actively used in the taxpayer's business for which a depreciation deduction would be allowed. The property must be used more than 50% for business and must be newly purchased property. Generally, taxpayers take expensing first and claim section 168(k) depreciation on any remaining basis.

Last year, Congress increased the annual expensing limitation to $125,000 with a phase-out beginning at $500,000. Both of these limitations are indexed for inflation. Thus, prior to the ESA, the deduction was limited to $128,000 of the cost of the property with a phase-out at $510,000 for 2008. Because the deduction is completely phased out for qualifying purchases exceeding $638,000, the deduction is confined generally to the relatively small business.

The new law temporarily doubles the limitation to $250,000.[4] The threshold for reducing the deduction is also increased to $800,000 with a complete phase-out once qualifying purchases exceed $1.05 million. These limitations apply only to property purchased and placed in service in tax years beginning in 2008. The limitations will return to the lower levels for tax years beginning in 2009.

►***BILL ANALYSIS:*** The bill conforms to the increased expensing limit.

Increased Depreciation Limits for "Luxury" Autos. – Since the new law permits taxpayers to claim bonus depreciation, it also increases section 280F depreciation limits on luxury vehicles.[5] A luxury vehicle is one that costs more than the "luxury auto price floor," which is adjusted annually for inflation along with the depreciation limits. The first-year limit on depreciation for passenger vehicles placed in service in 2008 is projected to be $2,960 for automobiles and $3,160 for vans and trucks. The new law raises the cap by $8,000 for a maximum first-year depreciation of $10,960 for autos and $11,160 for vans and trucks.

►***BILL ANALYSIS:*** The bill conforms to this provision.

Mortgage Forgiveness Debt Relief Act of 2007 (P.L. 110-142)

Enacted on December 20, 2007, the Mortgage Forgiveness Debt Relief Act was Congress's response to the problems generated by the subprime crisis, short sales, and rising foreclosure rates.

Income Exclusion for Discharged Indebtedness on Principal Residence. - When a lender forecloses on property, sells the home for less than the borrower's outstanding mortgage and forgives all or part of the unpaid mortgage debt, the canceled debt is considered income under the Code. This act provides an exclusion from income for this discharged indebtedness related to a principal residence for the three-year period beginning January 1, 2007 and ending December 31, 2009. There is no income limitation but no more than $2 million in mortgage debt is eligible for exclusion.

Extension of Deduction for Mortgage Insurance Premiums. - The act temporarily extends for three years, through tax year 2010, the deduction for qualified mortgage insurance premiums. Qualified mortgage insurance is mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, the Rural Housing Administration, or private mortgage insurance.

Surviving Spouse Home Sale Exclusion. – The new law extends the period of time during which a surviving spouse may use the joint return filers' $500,000 home sale gain exclusion before being treated as a single individual, who is entitled only to a $250,000. Previously, a surviving spouse was entitled to the $500,000 exclusion only to the extent he or she could file a joint return with the deceased spouse's estate, which only occurs for the tax year in which the spouse dies. Starting January 1, 2008, the sale of a residence that had been jointly owned and occupied by the surviving and deceased spouse is entitled to the $500,000 gain exclusion provided the sale occurs no later than two years after the date of death of the individual spouse.

[4] The new law does not alter the section 179 limitation imposed on sport utility vehicles, which have an expense limit of $25,000.

[5] These limits were increased when bonus depreciation was previously available.

Income Exclusion for Volunteer Emergency Responders. - The act also allows volunteer emergency responders to exclude from income state and local tax benefits of up to $360 for tax years beginning after December 31, 2007. The benefit expires in 2010. Last year, the General Assembly established a $250 income tax deduction for certain volunteer emergency responders who attend at least 36 hours of annual training.

►***BILL ANALYSIS:*** The bill conforms to the provisions of this act.

Small Business and Work Opportunity Tax Act of 2007 (P.L. 110-28)

Enacted on May 25, 2007, the Small Business and Work Opportunity Act of 2007 (SBWOA) was part of the larger U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007. It includes nearly $5 billion in tax incentives primarily for small businesses to help businesses absorb the cost of complying with the increase in the federal minimum wage as well as a package of S corporation reforms. It includes the following provisions:

Increased Small Business Expensing Limit – The dollar and investment limitations for expensing were increased retroactively to January 1, 2007, and were extended through 2010. The prior base limit of $100,000 was increased to $125,000 and the investment limitation was increased from $450,000 to $500,000 for tax years beginning in 2007. Both limits are indexed for inflation. However, this provision is effectively superseded by the newly increased expensing provision in the ESA.

Extension of Work Opportunity Tax Credit – Created in 1996 by the Small Business Job Protection Act, this tax credit is designed to encourage employers to hire individuals from economically-challenged populations. There are nine "target" groups, including public assistance recipients, ex-felons, veterans, high-risk youth, individuals who reside in certain economically depressed areas, and individuals referred to the employer as part of a vocational rehabilitation plan. The amount of the credit is a percentage of qualified wages paid during each of the first two years of employment. Prior to this act, the credit was scheduled to expire for employees hired after December 31, 2007.

This act extends the sunset for three and a half years, until August 31, 2011, and expands the scope of the credit. It expands the targeted veterans' population to include veterans with service-connected disabilities who have been unemployed for six months or more during a one-year period ending on the hire date and are hired within one year after having been discharged form the military or released from active duty. It also increases from $6,000 to $12,000 in the case of individuals who qualify under the newly expanded veterans' group. The high-risk youth and vocational rehabilitation referral groups are also expanded.

Family Business Tax Simplification - Effective for tax years beginning on and after December 31, 2006, the act allows a married couple who jointly operates an unincorporated business and who files a joint return to elect not to be treated as a partnership for federal tax purposes.

Katrina Recovery Tax Incentives. **–** The act also extends and enhances some of the tax incentives in the Gulf Opportunity Zone Act of 2005 and Katrina Emergency Tax Relief Act of 2005. These include the extension of special expensing for qualified property, an enhanced low-income housing credit, and flexible tax-exempt bond financing rules.

S Corporation Changes – Generally speaking, these provisions are designed to make it easier for small business to retain S corp status. They also encourage use of the S corp business entity by effectively reducing the taxes owed by shareholders.

1. <u>Passive investment income</u>. – An S corporation that has accumulated C corporation earnings and profits and has gross receipts of which more than 25% are passive investment income may lose its Subchapter S status and will be subject to a tax on the excess passive investment income. Effective for tax years beginning after May 25, 2007, capital gain from the sale or exchange of

stock or securities is no longer treated as an item of passive investment income. These gains are still counted as gross receipts but not as passive investment income.

2. Banks as S corps. - Effective for tax years beginning after December 31, 2006, the new law eliminates the treatment of restricted bank director stock as outstanding stock that threatened S corp status under the single-class-of-stock rule. It also alters the treatment of accounting adjustments caused by a bank changing its method of accounting.

3. Partial sale of QSubs. – A qualified Subchapter S subsidiary (QSub) is a wholly owned subsidiary that an S corp elects to treat as a QSub. Under the new law, a sale of QSub stock that terminates the QSub election and creates a deemed new corporation is now treated as a sale of an undivided interest in the assets of the QSub. This treatment eliminates the danger of an avalanche of gain being recognized by a sale of only a partial, but substantial (i.e. more than 20%), interest in the subsidiary.

4. ESBT interest. – Effective for tax years beginning after December 31, 2006, the new law allows an electing small business trust (ESBT) to deduct interest paid on money borrowed to acquire S corporation stock. Although Treasury regulations allocated the interest to the S corporation portion of the ESBT, they did not allow a deduction.

5. E&P reduction. – Effective for tax years beginning after May 15, 2007, the new law allows a corporation that was an S corp before 1983, but was not an S corp for its first tax year that began after December 31, 1996, to eliminate its pre-1983 earnings and profits from the corporations accumulated E&P balance. This benefit had previously been available only to a corporation that was an S corp for its first taxable year after 1996. The result is that S corps to which this new provision applies may be able to reduce the amount of distributions treated as taxable dividends.

►***BILL ANALYSIS:*** The bill conforms to the provisions of this act.

EFFECTIVE DATE: This bill is effective for taxable years beginning on or after January 1, 2008.

2007-SMSVxz-18

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

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, 2008

TO: Revenue Laws Study Committee

FROM: Barry Boardman
Fiscal Research Division

RE: 2007-SVxz-18 IRC Update

FISCAL IMPACT

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

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
REVENUES (millions): **Net General Fund Impact**	0.0	(1.2)	(0.8)	4.3	4.0
EXPENDITURES:					
POSITIONS (cumulative):					

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

EFFECTIVE DATE: January 1, 2008

BILL SUMMARY: This proposal would update from January 1, 2007, to May 1, 2008, the reference to the Internal Revenue Code used in defining and determining certain State tax provisions. By doing so, North Carolina would conform to changes made by three federal acts, except that the bill would delay the impact of the bonus depreciation provision authorized by the Economic Stimulus Act. The bill would become effective for taxable years beginning on or after January 1, 2008.

The proposal would change the reference date to May 1, 2008. By changing the reference date to May 1, 2008, the bill effectively incorporates into our State tax laws changes made by three federal acts, with one exception. The Economic Stimulus Act of 2008 (ESA) has three major components, only two of which impact State revenues: the 50% bonus depreciation provision and the increased expensing limit. The bill conforms to the increased expensing limit but delays the impact of the bonus depreciation provision. Additional detail on the nonconforming provision is provided below. The three federal acts are as follows:

- Economic Stimulus Act of 2008
- Mortgage Forgiveness Debt Relief Act of 2007
- Small Business and Work Opportunity Tax Act of 2007

Economic Stimulus Act of 2008

Enacted on February 13, 2008, the Economic Stimulus Act of 2008 (P.L. 110-185) is a $152 billion package designed to stimulate the economy through rebates for individual taxpayers and incentives for businesses. The rebates, which are technically "advance credit payments," do not impact State revenues and are not discussed in this analysis. The three business incentives are the 50% bonus depreciation provision for qualifying property placed in service in 2008, the increased limits for section 179 expensing of qualified property in 2008, and increased depreciation limits for "luxury" autos predominantly used for business.

50% Bonus Depreciation Provision. **–** Depreciation is an income tax deduction that allows a taxpayer to recover the cost or other basis of certain property over several years. It is an annual allowance for the wear and tear, deterioration, or obsolescence of the property. Bonus depreciation allows a business to claim more of a deduction up front and spread the remainder out over the normal depreciation schedule. In other words, a taxpayer will recover the basis in the asset sooner than under prior law. However, over the life of the asset the taxpayer still receives the same benefit. Congress has used bonus depreciation several times to encourage business investment, specifically after September 11, 2001. The Jobs Creation and Worker Assistance Act of 2002 provided a 30% bonus depreciation allowance. The Jobs and Growth Tax Relief Reconciliation Act of 2003 extended the sunset and increased the amount to 50%.

Under the ESA, a taxpayer is entitled to depreciate in the first year 50% of the adjusted basis of certain qualified property placed in service during the 2008 calendar year.[1] To be eligible to claim bonus depreciation, property must be (1) eligible for the modified accelerated cost recovery system (MACRS) with a depreciation of 20 years or less; (2) water utility property; (3) off-the-shelf computer software; or (4) qualified leasehold property. Bonus depreciation is available for every item of tangible personal property, except inventory, property used outside the U.S., and property depreciated under the alternative depreciation system. Other than the computer software mentioned, it is not available for intangibles. If property is sold in the same year it is placed in service, no bonus depreciation is allowed.

The bill does not conform State law to the accelerated depreciation schedule allowed under the ESA. Over the life of an asset placed in service during 2008, taxpayers will be able to deduct the same amount of the asset's basis under both federal and State law; it is just that the timing of the deduction will differ. To accomplish this "decoupling" from the federal accelerated depreciation provision, the bill does two things:

- The taxpayer must add back to federal taxable income 85% of the accelerated depreciation amount (50%) in the year the accelerated depreciation is claimed for federal purposes. The

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add-back means that for State tax purposes, a taxpayer would deduct less in that tax year than the taxpayer would have deducted if the State conformed to the accelerated depreciation law.

- In tax years beginning on or after January 1, 2009, the taxpayer may deduct from federal taxable income the total amount of the add-back required for either the 2007 or 2008 tax year, divided into five equal installments. This means that for State tax purposes, a taxpayer would be allowed to deduct a greater depreciation amount in the outlying tax years – the normal depreciation amount plus 20% of the accelerated depreciation amount the taxpayer had to add back. The purpose of this recovery provision is to enable the taxpayer to have the same basis in assets for federal and State purposes. Without this deduction provision, a taxpayer would have a different basis in the depreciable asset for State and federal purposes and would have to keep separate books and records for State and federal purposes until the disposal of the asset. In effect, the add-back and subsequent deduction will affect the timing of the impact of bonus depreciation on the State but it will not increase or decrease the total amount of revenue the State receives over the affected years.

Increased Section 179 Expensing Limits **-** In general, a qualifying taxpayer may elect to treat the cost of certain property as an expense and deduct it in the year the property is placed in service instead of depreciating it over several years. This property is frequently referred to as section 179 property, after the relevant section in the Internal Revenue Code. To be eligible, the property must be tangible personal property which is actively used in the taxpayer's business for which a depreciation deduction would be allowed. The property must be used more than 50% for business and must be newly purchased property. Generally, taxpayers take expensing first and claim section 168(k) depreciation on any remaining basis.

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The new law temporarily doubles the limitation to $250,000.[2] The threshold for reducing the deduction is also increased to $800,000 with a complete phase-out once qualifying purchases exceed $1.05 million. These limitations apply only to property purchased and placed in service in tax years beginning in 2008. The limitations will return to the lower levels for tax years beginning in 2009.

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unpaid mortgage debt, the canceled debt is considered income under the Code. This act provides an exclusion from income for this discharged indebtedness related to a principal residence for the three-year period beginning January 1, 2007 and ending December 31, 2009. There is no income limitation but no more than $2 million in mortgage debt is eligible for exclusion.

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Increased Small Business Expensing Limit – The dollar and investment limitations for expensing were increased retroactively to January 1, 2007, and were extended through 2010. The prior base limit of $100,000 was increased to $125,000 and the investment limitation was increased from $450,000 to $500,000 for tax years beginning in 2007. Both limits are indexed for inflation. However, this provision is effectively superseded by the newly increased expensing provision in the ESA.

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This act extends the sunset for three and a half years, until August 31, 2011, and expands the scope of the credit. It expands the targeted veterans' population to include veterans with service-connected disabilities who have been unemployed for six months or more during a one-year period ending on the hire date and are hired within one year after having been discharged form the military or released from active duty. It also increases from $6,000 to $12,000 in the case of individuals who qualify under the newly expanded veterans' group. The high-risk youth and vocational rehabilitation referral groups are also expanded.

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Katrina Recovery Tax Incentives. **–** The act also extends and enhances some of the tax incentives in the Gulf Opportunity Zone Act of 2005 and Katrina Emergency Tax Relief Act of 2005. These include the extension of special expensing for qualified property, an enhanced low-income housing credit, and flexible tax-exempt bond financing rules.

***S Corporation Changes* –** Generally speaking, these provisions are designed to make it easier for small business to retain S corp status. They also encourage use of the S corp business entity by effectively reducing the taxes owed by shareholders.

6. <u>Passive investment income</u>. **–** An S corporation that has accumulated C corporation earnings and profits and has gross receipts of which more than 25% are passive investment income may lose its Subchapter S status and will be subject to a tax on the excess passive investment income. Effective for tax years beginning after May 25, 2007, capital gain from the sale or exchange of stock or securities is no longer treated as an item of passive investment income. These gains are still counted as gross receipts but not as passive investment income.
7. <u>Banks as S corps.</u> - Effective for tax years beginning after December 31, 2006, the new law eliminates the treatment of restricted bank director stock as outstanding stock that threatened S corp status under the single-class-of-stock rule. It also alters the treatment of accounting adjustments caused by a bank changing its method of accounting.
8. <u>Partial sale of QSubs</u>. **–** A qualified Subchapter S subsidiary (QSub) is a wholly owned subsidiary that an S corp elects to treat as a QSub. Under the new law, a sale of QSub stock that terminates the QSub election and creates a deemed new corporation is now treated as a sale of an undivided interest in the assets of the QSub. This treatment eliminates the danger of an avalanche of gain being recognized by a sale of only a partial, but substantial (i.e. more than 20%), interest in the subsidiary.
9. <u>ESBT interest.</u> **–** Effective for tax years beginning after December 31, 2006, the new law allows an electing small business trust (ESBT) to deduct interest paid on money borrowed to acquire S corporation stock. Although Treasury regulations allocated the interest to the S corporation portion of the ESBT, they did not allow a deduction.
10. <u>E&P reduction.</u> **–** Effective for tax years beginning after May 15, 2007, the new law allows a corporation that was an S corp before 1983, but was not an S corp for its first tax year that began after December 31, 1996, to eliminate its pre-1983 earnings and profits from the corporations accumulated E&P balance. This benefit had previously been available only to a corporation that was an S corp for its first taxable year after 1996. The result is that S corps to which this new provision applies may be able to reduce the amount of distributions treated as taxable dividends.

ASSUMPTIONS AND METHODOLOGY:
Based on the analysis of the Joint Committee on Taxation (JCT), there are three sections of this bill that would impact the State's General Fund revenues. They are the Sec. 179 expensing increases and the 50% bonus depreciation, which were both part of the Economic Stimulus Act, plus the Mortgage Debt Forgiveness Act. According to JCT analysis, the other sections of the IRC update are expected to have minimal or no impact on the General Fund.

The fiscal impact to the General Fund from partial conformity with the IRC update is based on JCT estimates on changes to federal taxes. The method used to determine the state fiscal impact begins with these JCT estimates. These estimates are calculated by federal fiscal year (October to October). Fiscal

Research adjusts these numbers back to an approximate calendar year tax impact. Then the next step was to prorate the national numbers to the state impact. This adjustment involved two steps: accounting for the relative size of the state based on federal tax collections and then adjusting for the difference in federal and state marginal tax rates. This method is similar to that used by the Center for Budget and Policy Priorities (CBPP). Therefore, the tax year estimates were compared with estimates produced by CBPP and were found to be comparable in magnitude.

Once North Carolina's share of the JCT estimates were determined, state tax liability changes were estimated and then allocated to the appropriate fiscal year. In order to assess the impact of the 85% addback of the bonus depreciation contained in the Fiscal Stimulus Act, a series of depreciation schedules were developed. These depreciation simulations were used to determine the impact of the bonus depreciation with the adoption of an 85 percent addback rule and a 5 year carryforward for each fiscal year.

To estimate the impact of the Mortgage Debt Forgiveness Act, similar methodology as described above was used. The share of North Carolina's fiscal impact was calculated with a slight difference. Rather than use tax collection data, real estate activity was used as a means to determine the State's share of the JCT estimated revenue changes.

SOURCES OF DATA: The Joint Committee on Taxation, The North Carolina Department of Revenue, Moody's economy.com., The Center for Budget and Policy Priorities

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #3

CORPORATE TAX LAW CHANGES

LEGISLATIVE PROPOSAL #3

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO CLOSE FRANCHISE TAX LOOPHOLES BY REQUIRING A LIMITED LIABILITY COMPANY THAT ELECTS TO BE TREATED AS A CORPORATION AND A CAPTIVE REIT TO PAY FRANCHISE TAX AND TO REQUIRE A PUBLICLY TRADED PARTNERSHIP TO GIVE THE DEPARTMENT OF REVENUE A LIST OF THE PARTNERS WHO RECEIVED MORE THAN FIVE HUNDRED DOLLARS OF INCOME FROM THE PARTNERSHIP.

SHORT TITLE: Corporate Tax Law Changes.

SPONSORS:

BRIEF OVERVIEW: This proposal would do the following:

- Make changes to the franchise tax laws that conform to changes the General Assembly made in 2006 and 2007 to the corporate income tax laws. The changes are recommended to the Revenue Laws Study Committee by the Department of Revenue.
- Require publicly traded partnerships (PTP) that qualify as a PTP under section 7704(c) of the Code to file an informational return with the Secretary of Revenue that lists the partners who received more than $500 of income from the partnership during the taxable year.

FISCA L IMPACT:

EFFECTIVE DATE: The franchise tax changes would become effective for taxable years beginning on or after January 1, 2009. The PTP changes would become effective for taxable years beginning on or after January 1, 2008.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

U **D**

BILL DRAFT 2007-RBxz-46 [v.1] (04/28)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/9/2008 2:14:51 PM

Short Title:	Corporate Tax Law Changes.	(Public)
Sponsors:	.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO CLOSE FRANCHISE TAX LOOPHOLES BY REQUIRING A LIMITED LIABILITY COMPANY THAT ELECTS TO BE TREATED AS A CORPORATION AND A CAPTIVE REIT TO PAY FRANCHISE TAX AND TO REQUIRE PUBLICLY TRADED PARTNERSHIPS TO GIVE THE DEPARTMENT OF REVENUE A LIST OF THE PARTNERS WHO RECEIVED MORE THAN FIVE HUNDRED DOLLARS OF INCOME FROM THE PARTNERSHIP.

The General Assembly of North Carolina enacts:

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

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

…

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

…"

SECTION 2. G.S. 105-114.1(a)(5) reads as rewritten:

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

SECTION 3. G.S. 105-125(b) reads as rewritten:

"(b) Certain Investment Companies. – ~~A corporation doing business in North Carolina that qualifies as a "regulated investment company" under section 851 of the Code or as a "real estate investment trust" under section 856 of the Code and elects for federal income tax purposes to be treated as a "regulated investment company" or as a "real estate investment trust,"~~ A corporation doing business in North Carolina that meets one or more of the following conditions may, in determining its basis for franchise tax, deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies, or ~~governments.~~ governments:

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

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

SECTION 4. G.S. 105-154 reads as rewritten:

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

(a) Repealed by Session Laws 1993, c. 354, s. 14.

(b) Information Returns of Payers. – A person who is a resident of this State, has a place of business in this State, or has an employee, an agent, or another representative in any capacity in this State shall file an information return as required by the Secretary if the person directly or indirectly pays or controls the payment of any income to any taxpayer. The return shall contain all information required by the Secretary. The filing of any return in compliance with this section by a foreign corporation is not evidence that the corporation is doing business in this State.

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

A partnership that files an information return under this subsection shall furnish to each person who would be entitled to share in the partnership's net income, if distributable, any information necessary for that person to properly file a State income tax return. The information shall be in the form prescribed by the Secretary and must be furnished on or before the due date of the information return.

(d) Payment of Tax on Behalf of Nonresident Owner or Partner. – If a business conducted in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the manager of the business shall report the earnings of the business in this State, the distributive share of the income of each nonresident owner or partner, and any other information required by the Secretary. The manager of the business shall pay with the return the tax on each nonresident owner or partner's share of the income computed at the rate levied on individuals under G.S. 105-134.2(a)(3). The business may deduct the payment for each nonresident owner or partner from the owner or partner's distributive share of the profits of the business in this State. If the nonresident partner is not an individual and the partner has executed an affirmation that the partner will pay the tax with its corporate, partnership, trust, or estate income tax return, the manager of the business is not required to pay the tax on the partner's share. In this case, the manager shall include a copy of the affirmation with the report required by this subsection.

(e) Publicly Traded Partnership. – The information return and payment requirements under this section are modified as follows for a partnership that qualifies as a publicly traded partnership under section 7704(c) of the Code:

(1) The information return required under subsection (c) of this section is limited to partners whose distributive share of the partnership’s net income during the tax year was more than five hundred dollars ($500).

(2) The payment requirements under subsection (d) of this section do not apply."

SECTION 5. Sections 1 through 3 of this act are effective for taxable years beginning on or after January 1, 2009. Section 4 of this act is effective for taxable years beginning on or after January 1, 2008. The remainder of this act is effective when it becomes law.

BILL DRAFT 2007-RBxz-46:
Corporate Tax Law Changes

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	May 9, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would make the following changes to the corporate income and franchise tax laws:

- ***It would change the franchise tax laws to conform with changes the General Assembly made in 2006 and 2007 to the corporate income tax laws. The changes are recommended to the Revenue Laws Study Committee by the Department of Revenue. These changes would become effective for taxable years beginning on or after January 1, 2009***

- ***It would require publicly traded partnerships (PTPs) that qualify as a PTP under section 7704(c) of the Internal Revenue Code to file an informational return with the Secretary of Revenue that lists the partners who received more than $500 of income from the partnership during the taxable year. These changes would become effective for taxable years beginning on or after January 1, 2008.***

FRANCHISE TAX CHANGES: The bill draft provides that limited liability companies (LLCs) that elect to be taxed as S corporations are subject to the franchise tax in the same manner as other S corporations and that captive REITS are subject to the franchise tax in the same manner as a corporation.

In 2006, the General Assembly amended the definition of 'corporation', as it applies to the franchise tax statutes, to include a LLC that elects to be taxed as a C corporation for federal income tax purposes. The Department of Revenue began to receive questions from S corporations as to whether they could convert to an LLC and elect to be treated as S corporations for income tax purposes, thereby becoming exempt from franchise tax. In 2005, S corporations paid more than $50 million in franchise tax. Section 1 of the bill would provide that an LLC that elects to be treated as a corporation for income tax purposes, either a C corporation or a S corporation, is also considered a corporation for franchise tax purposes. Section 2 would make a conforming change to the definition of 'noncorporate limited liability company'.

In 2007, the General Assembly limited a corporation's ability to use captive real estate investment trusts (REITs) to avoid State taxes by disallowing the dividend paid deduction when a REIT is a captive REIT. The effect of this change is that a captive REIT is treated as a regular corporation for income tax purposes. A REIT is an organization that uses the pooled capital of many investors to purchase and mange real estate. [1] A REIT that is owned or controlled by a single entity is commonly referred to as a captive REIT.[2]

Section 3 of the bill would provide that a captive REIT is also treated as a regular corporation for franchise tax purposes. Under the current franchise tax law, a REIT may, in determining its value for franchise tax purposes, deduct the aggregate market value of its investments in the stocks, bonds,

[1] Under federal and State law, a REIT is taxable only on income that is not distributed to shareholders. The amount of income a REIT distributes is not subject to tax because the REIT is allowed a deduction for the dividends it pays. The amounts received by the shareholders of the REIT are taxable.

[2] Two common types of captive REITs are rental REITs and mortgage REITs.

debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies or governments. Section 3 of the bill draft changes the statute to provide that this deduction may only be used by a REIT that is not a captive REIT.

PUBLICLY TRADED PARTNERSHIPS: A partnership doing business in this State must file an information return with the Department of Revenue that gives the name and address of each person who would be entitled to share in the partnership's net income, if distributable, and the amount each person's distributive share would be. A partnership that files a report must also furnish to each partner the information needed by that partner to file a North Carolina income tax return. For nonresident members of a partnership, the partnership must pay income tax for that partner based on the partner's distributive share.

Section 4 of the bill would change the reporting and payment requirements that apply to PTPs that qualify as a PTP under section 7704(c) of the Internal Revenue Code. It would require a qualifying PTP to report annually to the Department the partners in the PTP who received more than $500 of income rather than report the income received by every partner. It would also exempt qualifying PTPs from the requirement to pay tax on the partnership income received by a nonresident. In making these changes, the bill seeks to strike a balance between the costs and burden of compliance with the reporting requirements for both the PTPs and the Department and the benefits gained by compliance.

A PTP is a limited partnership the interests in which are traded on stock exchanges such as the New York, American, and NASDAQ exchanges. Unlike a traditional partnership, a PTP has tens of thousands, and sometimes hundreds of thousands, of unitholders.[3] A PTP's unitholders can change daily in trades on public exchanges. A PTP determines who its unitholders are once a year so the PTP can send K-1s to the unitholders.

PTPs operate in several states. The amount paid by any unitholder once a PTP's taxable income has been divided up among all unitholders and apportioned among all the states in which the PTP does business will rarely be a large amount, and in many cases will be under the state threshold for paying tax. In looking at the PTPs in North Carolina, only a small number of their unitholders has income above $500 from the partnership during the taxable year.[4] The information reportable to the Department under this proposal would allow it to cross-check a handful of entities and individuals to ensure they are paying tax owed to North Carolina.

PTPs pay their unitholders quarterly cash distributions. [5] Although the distributions resemble corporate dividends, PTP distributions are treated differently for tax purposes. The distributions are treated as a return of capital rather than taxable investment income and reduce the partner's basis in its partnership units.[6] When the units are sold, the difference between the sales price and the adjusted basis equals taxable gain or loss. The partner is not taxed on the distributions until (1) it sells the PTP units and pays tax on the gain or (2) its basis reaches zero.[7]

Every unit in a class of securities must be identical to, and interchangeable with, every other unit so that it makes no difference to a purchaser which particular units are bought. If a PTP pays state tax for a nonresident unitholder and deducts the payment from the unitholder's share, the nonresident's units will

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[3] Many of the units are held in 'street names' by brokerage houses.

[4] A survey of seven PTPs in N.C., conducted by the National Association of Publicly Traded Partnerships, showed that the PTPs had more than 200,000 unitholders. Of those 200,000 unitholders, only seven of them had income levels of more than $500 and only four of them had income levels above $1,000. Of the unitholders with income above $500, six of them were corporations.

[5] The cash distributions are unrelated to the partner's share of taxable income, which is received only on paper. Partners are liable for tax on their share of partnership income whether or not they receive a cash distribution.

[6] The investor's original basis is the price paid for the units. The basis is reduced by each distribution that is treated as a return of capital and is increased or decreased, as appropriate, with each allocation of the PTP's net income or loss.

[7] It usually takes years for a partner's basis to be reduced to zero because the basis is constantly adjusting up and down, as described in the preceding footnote.

have different attributes than those held by state residents, and that would cause the PTP to be in noncompliance with federal security laws and to forfeit its exchange listings.

The Multi-State Tax Commission (MTC) adopted a model statute in December 2003 that exempts PTPs that qualify as a PTP under section 7704(c) of the Code from paying tax on partnership income received by a nonresident member so long as the PTP agrees to file an annual information return reporting the name, address, and taxpayer identification number of each unitholder with an income in the state in excess of $500. This proposal adopts the substance of the MTC model statute. Twenty-six states have excluded PTPs from tax payment requirements for nonresident partners through either specific legislation or administrative action. Eight states exempt PTPs from reporting distributions to its partners except for distributions of income that exceed $1,000 during the taxable year.

BACKGROUND: PTPs initially came into existence during the 1980s as a means for companies to raise large amounts of capital that are used to build or buy capital-intensive assets, like pipelines. The limited partnership has one or more general partners that mange the partnership and limited partners that provide capital to the partnership.

Under the Internal Revenue Code, a PTP may be treated like a partnership for income tax purposes rather than a corporation if it meets the 'qualified income test' under section 7704(c) of the Code: a PTP must generate 90% of its income from qualified sources. Qualified sources include real estate activities, mineral or natural resources activities like exploration, production, mining, refining, marketing, and transportation of oil, gas, minerals, geothermal energy, and timber. Most PTPs that meet the section 7704(c) income restrictions are in energy or real estate related businesses. There are approximately 90 PTPs that meet this requirement in the country, and 10 in North Carolina.[8]

Since the Code treats a section 7704(c) PTP like a partnership, the PTP itself does not pay tax. Rather, its income and other tax items are 'passed through' to the individual partners. A PTP investor receives a K-1 form at the end of each year showing its share of each item of partnership income, gain, loss, deductions, and credits. The investor uses that information to determine its taxable partnership income.[9]

[8] The ten PTPs in N.C. are involved in pipelines (1), terminal facilities (2), propane gas (5), and real estate (2). N.C. PTPs include Magellan Midstream Partners, Spectra Energy Partners, AmeriGas, and Ferrell Gas.

[9] If the result is net income, the partner pays tax on it at its individual rate. If the result is a net loss, it is considered a 'passive loss' and may not be used to offset income from other sources; it must be carried forward and used to offset future income from the same PTP.

LEGISLATIVE PROPOSAL #4

MODIFY ESTATE TAX LAW

LEGISLATIVE PROPOSAL #4

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO MODIFY THE FORMULA FOR CALCULATING NORTH CAROLINA ESTATE TAX ON ESTATES WITH PROPERTY IN MORE THAN ONE STATE.

SHORT TITLE: Modify Estate Tax Law.

SPONSORS:

BRIEF OVERVIEW: The proposal would modify the formula for calculating North Carolina estate tax on estates that include property located in another state by excluding the value of that property from the estate tax payable to North Carolina.

FISCAL IMPACT: Based on data provided by the Department of Revenue, the dollar amount from taxpayers claiming a refund could equal $1.5 million. This estimate is based on estate tax returns between 2002 and 2007 and assumes:

1) that the statute of limitations would extend no more than three years prior to December 28, 2007; and
2) that all taxpayers eligible for a refund will apply for the refund.

Passage of this bill will also mean that all out of state property will be excluded from the estate tax and this would reduce estate tax collections by $0.5 million per fiscal year.

EFFECTIVE DATE: The bill would become effective when it becomes law and apply retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired as of December 28, 2007.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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BILL DRAFT 2007-RBz-33 [v.4] (03/26)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/1/2008 6:46:06 PM

Short Title: Modify Estate Tax Law. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE FORMULA FOR CALCULATING NORTH CAROLINA ESTATE TAX ON ESTATES WITH PROPERTY IN MORE THAN ONE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section is the amount of the state death tax credit that, as of December 31, 2001, would have been allowed under section 2011 of the Code against the federal taxable estate. The tax may not exceed the amount of federal estate tax due under the Code. The federal taxable estate and the amount of the federal estate tax due are determined without taking into account the deduction for state death taxes allowed under Section 2058 of the Code and the credits allowed under sections 2011 through 2015 of the Code.

If any property in the estate is located in a state other than North Carolina, the amount of tax payable depends on whether the decedent was a resident of this State at death. If the decedent was a resident of this State at death, the amount of tax due under this section is reduced by ~~the lesser of the amount of the death tax paid the other state or~~ an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of the estate that has a tax situs in another state and the denominator of which is the value of the decedent's gross estate. If the decedent was not a resident of this State at death, the amount of tax due under this section is an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of real property that is located in North Carolina plus the gross value of any personal property that has a tax situs in North Carolina and the denominator of which is the value of the decedent's gross estate. For purposes of this section, the gross value of property is its gross value as finally determined in the federal estate tax proceedings."

SECTION 2. This act is effective when it becomes law and applies retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired as of December 28, 2007. A personal representative of an estate for which the statute of limitations had not expired as of December 28, 2007, may file a claim for refund under G.S. 105-241.6.

BILL DRAFT 2007-RBz-33:
Modify Estate Tax Law

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 2, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would modify the formula for calculating North Carolina estate tax on estates that include property located in another state by excluding the value of that property from the estate tax payable to North Carolina. The bill would become effective when it becomes law and apply retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired as of December 28, 2007.

CURRENT LAW: For estates with property only in North Carolina, the North Carolina estate tax equals the amount of the credit for state estate tax allowed on the federal estate tax return, as the federal law provided in 2001. If an estate has property in more than one state, the federal credit amount must be prorated between North Carolina and the other states in which the estate has property. In 2002, the Estate Tax Section of the North Carolina Bar Association recommended a change in the calculation formula from a net value ratio to a gross value ratio. The recommended change also provided that when the estate of a North Carolina decedent included out-of-state property, the North Carolina estate tax would be calculated as the amount of the 2001 tax credit reduced by *the lesser of* the amount of estate tax paid to the other state or the amount of the 2001 tax credit times the value of the out-of-state property divided by the value of the gross estate.[1]

In 2001, Congress phased out the state estate tax credit over four years by reducing it 25% in 2002, 50% in 2003, 75% in 2004,and by repealing it entirely in 2005.[2] In calculating the estate tax payable in North Carolina for an estate that includes property located in a state that does not impose an estate tax, the current formula provides that the North Carolina estate tax would be reduced by zero, because that is the lesser of the amount paid to the state that does not impose an estate tax. This calculation results in North Carolina's estate tax being imposed on property that is not located within its taxing jurisdiction.[3]

BILL ANALYSIS: This bill draft would modify the formula for calculating North Carolina estate tax on estates that include property located in another state by prorating the federal credit amount between North Carolina and the other states in which the estate has property; it would eliminate the '*lesser of*' language that sometimes results in North Carolina's estate tax being imposed on property located in another state.

A case has been filed in Mecklenburg County, ***Stowe v. Department of Revenue***, to recover North Carolina estate taxes imposed on property located in South Carolina. The plaintiffs argue in their

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[1] This provision mirrored the Virginia law as it existed prior to July 1, 2007.

[2] The provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 made a number of changes to the estate tax rates and to the applicable exclusion amounts. The top marginal tax rates were gradually reduced and the exclusion amounts were gradually increased, with a full repeal of the estate tax for 2010. For 2007 through 2009, the top marginal tax rate is 45%; for 2007 and 2008, the applicable exclusion amount is $2,000,000; for 2009, the applicable exclusion amount is $3,500,000. The provisions for these changes are currently set to expire for estates of decedents dying on or after December 31, 2010. Therefore, in 2011, the exclusion amount goes back to $1,000,000, the top marginal rate returns to 55%, and the state estate tax credit is reinstated.

[3] Virginia repealed its estate tax in 2006. South Carolina, Georgia, and Tennessee do not require the payment of an estate tax for estates on which the federal estate tax law doe not allow a credit for state estate tax (2005-through 2010).

complaint that the formula for calculating North Carolina estate tax due when property is located in more than one state is unconstitutional because it provides less than a full reduction of the tax attributable to the out-of-state property when the other state does not impose an estate tax, or imposes an estate tax less than the prorated federal credit amount. The plaintiffs filed the complaint on December 27, 2007.

The bill draft provides that the change proposed in the bill would become effective when it becomes law and would apply retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired on December 27, 2007. A personal representative of an estate for which the statute of limitations had not expired may file a claim for refund under G.S. 105-241.6.

G.S. 105-241.6 provides that the general statute of limitations for obtaining a refund of an overpayment of tax is the later of the following:

- Three years after the due date of the return. – A North Carolina estate tax return is due on the date a federal estate tax return is due. A federal estate tax return is due nine months from the date of death. An extension of time to file a federal estate tax return is an automatic extension of the time to file a State tax return.
- Two years after payment of the tax.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

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:

TO:

FROM: Barry Boardman
Fiscal Research Division

RE: 2007-RBz-33

FISCAL IMPACT

	Yes ( )	No ( )	No Estimate Available ( )		
	FY 2008-09	**FY 2009-10**	**FY 2010-11**	**FY 2011-12**	**FY 2012-13**
REVENUES ($ millions):	**(2.0)**	**(0.5)**	**(0.5)**	**(0.5)**	**(0.5)**
EXPENDITURES:					
POSITIONS (cumulative):					

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

EFFECTIVE DATE: When the bill becomes law

BILL SUMMARY: This bill would modify the formula for calculating the North Carolina estate tax on estates that include property in another state by excluding the value of the property from the estate tax payable to North Carolina. The bill apply retroactively to the estates of decedents for which the statue of limitations for claiming a refund had not expired as of December 28, 2007.

ASSUMPTIONS AND METHODOLOGY: Based on data provided by the Department of Revenue, the dollar amount from taxpayers claiming a refund could equal $1.5 million. This estimate is based on estate tax returns between 2002 and 2007 and assumes that the statute of limitations would extend no more than three years prior to December 28, 2007. It is also assumed that all taxpayers eligible for a refund will apply for the refund. Passage of this bill will also mean that all out of state property will be excluded from the estate tax and this would reduce estate tax collections by $0.5 million per fiscal year.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #5

DEFERRED PROPERTY TAX PROGRAMS CHANGES

LEGISLATIVE PROPOSAL #5

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO MODIFY THE CIRCUIT BREAKER TAX BENEFIT, TO STANDARDIZE ADMINISTRATION OF ALL DEFERRED PROPERTY TAX PROGRAMS, AND TO CORRECT THE EFFECTIVE DATE OF CHANGES TO THE HOMESTEAD EXCLUSION.

SHORT TITLE: Deferred Property Tax Programs Changes.

SPONSORS:

BRIEF OVERVIEW: This proposal would make certain modifications to the circuit breaker tax benefit, as recommended by the Department of Revenue, the School of Government, and county assessors and collectors, to ease the administration and implementation of the program; would create a new statutory section to collect and synchronize administration of all of North Carolina's property tax deferral programs; would create a new statutory section to collect and simplify statutory treatment of enforced collection remedies; and would make other necessary technical, clarifying, and conforming changes.

FISCAL IMPACT: The draft bill contains no provisions that are expected to have any significant fiscal impact.

EFFECTIVE DATE: This act would be effective for taxes imposed for taxable years beginning on or after July 1, 2008.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S **D**

BILL DRAFT 2007-MCxz-195C [v.7] (2/4)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/6/2008 11:19:46 AM

Short Title:	Deferred Property Tax Programs Changes.	(Public)
Sponsors:	Senator.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CIRCUIT BREAKER TAX BENEFIT, TO STANDARDIZE ADMINISTRATION OF ALL DEFERRED PROPERTY TAX PROGRAMS, AND TO CORRECT THE EFFECTIVE DATE OF CHANGES TO THE HOMESTEAD EXCLUSION.

The General Assembly of North Carolina enacts:

PART I: CIRCUIT BREAKER MODIFICATIONS

SECTION 1.1. G.S. 105-273 reads as rewritten:

"**§ 105-273. Definitions.**

~~When used in this Subchapter (unless the context requires a different meaning):~~The following definitions apply in this Subchapter:

(1) ~~"Abstract" means the~~Abstract. – The document on which the property of a taxpayer is listed for ad valorem taxation and on which the appraised and assessed values of the property are recorded.

(2) ~~"Appraisal" means both the~~Appraisal. – The true value of property ~~and~~ or the process by which true value is ascertained.

(3) ~~"Assessment" means both the~~Assessment. – The tax value of property ~~and~~ or the process by which the assessment is determined.

(4) Repealed by Session Laws 1973, c. 695, s. 15, effective January 1, 1974.

(4a) ~~"Code" [is] defined~~Code. – Defined in G.S. 105-228.90.

(5) ~~"Collector" or "tax collector" means any~~Collector or tax collector. – A person charged with the duty of collecting taxes for a county or municipality.

(5a) ~~"Contractor" means a~~Construction contractor. – A taxpayer who is regularly engaged in building, installing, repairing, or improving real property.

(6) ~~"Corporation" includes nonprofit corporation and every type of~~ Corporation. – An organization having capital stock represented by ~~shares.~~ or an incorporated, non-profit organization.

(6a) ~~"Discovered property" includes all~~ Discovered property. – Any of the following:

a. Property that was not listed during a listing period.

b. Property that was listed but the listing included a substantial understatement.

c. Property that has been granted an exemption or exclusion and does not qualify for the exemption or exclusion.

(6b) ~~"To discover property" means to~~Discover property. – ~~determine~~Determine any of the following:

a. Property has not been listed during a listing period.

b. A taxpayer made a substantial understatement of listed property.

c. Property was granted an exemption or exclusion and the property does not qualify for an exemption or exclusion.

(7) ~~"Document" includes book,~~Document. – A book, paper, record, statement, account, map, plat, film, picture, tape, object, instrument, ~~and~~ or any other thing conveying information.

(7a) ~~"Failure to list property" includes all~~Failure to list property. – Any of the following:

a. Failure to list property during a listing period.

b. A substantial understatement of listed property.

c. Failure to notify the assessor that property granted an exemption or exclusion under an application for exemption or exclusion does not qualify for the exemption or exclusion.

(8) ~~"Intangible personal property" means patents,~~Intangible personal property. – Patents, copyrights, secret processes, formulae, good will, trademarks, trade brands, franchises, stocks, bonds, cash, bank deposits, notes, evidences of debt, leasehold interests in exempted real property, bills and accounts receivable, ~~and~~ or other like property.

(8a) ~~"Inventories" means~~Inventories. – Any of the following:

a. ~~(i) goods~~Goods held for sale in the regular course of business by manufacturers, retail and wholesale merchants, and ~~contractors, and (ii)~~construction contractors. As to retail and wholesale merchants and construction contractors, the term includes packaging materials that accompany and become a part of the goods sold.

b. ~~goods~~Goods held by construction contractors to be furnished in the course of building, installing, repairing, or improving real property.

c. As to manufacturers,~~ the term includes raw~~ raw materials, goods in process, ~~and~~ finished goods, ~~as well as~~or other materials or supplies that are consumed in manufacturing or ~~processing,~~processing or that accompany and become a part of the sale of the property being sold. The term does not include fuel used in manufacturing or processing and materials or supplies not used directly in manufacturing or processing.

d. ~~The term also includes a~~A modular home as defined in G.S. 105-164.3(21b) that is used exclusively as a display model and held for eventual sale at the retail merchant's place of business.

e. ~~The term also includes crops,~~Crops, livestock, poultry, feed used in the production of livestock and poultry, ~~and~~ or other agricultural or horticultural products held for sale, whether in process or ready for sale. ~~The term does not include fuel used in manufacturing or processing, nor does it include materials or supplies not used directly in manufacturing or processing. As to retail and wholesale merchants and contractors, the term includes, in addition to articles held for sale, packaging materials that accompany and become a part of the sale of the property being sold.~~

(9) ~~"List" or "listing," when used as a noun, means abstract.~~List or listing. – An abstract, when the term is used as a noun.

(10) Repealed by Session Laws 1987, c. 43, s. 1.

(10a) ~~"Local tax official" includes a~~Local tax official. – A county assessor, an assistant county assessor, a member of a county board of commissioners, a member of a county board of equalization and review, a county tax collector, ~~and~~ or the municipal ~~equivalents~~ equivalent of one of these officials.

(10b) ~~"Manufacturer" means a~~Manufacturer. – A taxpayer who is regularly engaged in the mechanical or chemical conversion or transformation of materials or substances into new products for sale or in the growth, breeding, raising, or other production of new products for sale. The term does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

(11) ~~"Municipal corporation" and "municipality" mean city,~~Municipal corporation or municipality. – A city, town, incorporated village, sanitary district, rural fire protection district, rural recreation district, mosquito control district, hospital district, metropolitan sewerage district, watershed improvement district, a consolidated city-county as

defined by G.S. 160B-2, or ~~other~~ another district or unit of local government by or for which ad valorem taxes are levied. ~~The terms also include a consolidated city-county as defined by G.S. 160B-2(1).~~

(12) ~~"Person" and "he" include any~~Person. – An individual, a trustee, an executor, an administrator, ~~other~~ another fiduciary, a corporation, a limited liability company, an unincorporated association, a partnership, a sole proprietorship, a company, a firm, or ~~other~~ another legal entity.

(13) ~~"Real property," "real estate," and "land" mean not only the~~Real property, real estate, or land. – Any of the following:

a. The land ~~itself,~~itself.

b. ~~but also buildings,~~Buildings, structures, improvements, ~~and~~ or permanent fixtures on ~~the land,~~land.

c. ~~and all~~All rights and privileges belonging or in any way appertaining to the property.

d. ~~These terms also mean a~~A manufactured home as defined in ~~G.S. 143-143.9(6)~~G.S. 143-143.9(6), unless it is considered tangible personal property for failure to meet all of the following requirements:

1. ~~if it~~It is a residential ~~structure;~~structure.
2. It has the moving hitch, wheels, and axles ~~removed;~~removed.
3. ~~and~~It is placed upon a permanent foundation either on land owned by the owner of the manufactured home or on land in which the owner of the manufactured home has a leasehold interest pursuant to a lease with a primary term of at least 20 years ~~for the real property on which the manufactured home is affixed~~ and ~~where~~ the lease expressly provides for disposition of the manufactured home upon termination of the lease. ~~A manufactured home as defined in G.S. 143-143.9(6) that does not meet all of these conditions is considered tangible personal property.~~

(13a) ~~"Retail Merchant" means a~~Retail merchant. – A taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to users or consumers.

(13b) ~~"Substantial understatement" means the~~Substantial understatement. – The omission of a material portion of the value, quantity, or other measurement of taxable property. The determination of materiality in each case shall be made by the assessor, subject to the taxpayer's right to review of the determination by the county board of equalization and review or board of commissioners and appeal to the Property Tax Commission.

(14) ~~"Tangible personal property" means all~~Tangible personal property. – All personal property that is not intangible and that is not permanently affixed to real property.

(15) ~~"Tax" and "taxes" include the~~Tax or taxes. – The principal amount of any ~~tax, costs, penalties, and interest imposed upon property tax or dog license tax.~~property tax or dog license tax and costs, penalties, and interest.

(16) ~~"Taxing unit" means a~~Taxing unit. – A county or municipality authorized to levy ad valorem property taxes.

(17) ~~"Taxpayer" means any~~Taxpayer. – A person whose property is subject to ad valorem property taxation by any county or municipality and any person who, under the terms of this Subchapter, has a duty to list property for taxation. ~~For purposes of collecting delinquent ad valorem taxes assessed on real property under G.S. 105-366 through G.S. 105-375, "taxpayer" means the owner of record on the date the taxes become delinquent and any subsequent owner of record of the real property if conveyed after that date.~~

(18) ~~"Valuation" means appraisal~~Valuation. – Appraisal and assessment.

(19) ~~"Wholesale Merchant" means a~~Wholesale merchant. – A taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to other retail or wholesale merchants for resale or to manufacturers for use as ingredient or component parts of articles being manufactured for sale."

SECTION 1.2. G.S. 105-277.1B reads as rewritten:

"**§ 105-277.1B. Property tax homestead circuit breaker.**

(a) Classification. – A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is taxable in accordance with this section.

(b) Definitions. – The definitions provided in G.S. 105-277.1 apply to this section.

(c) Income Eligibility Limit. – The income eligibility limit provided in G.S. 105-277.1(a2) applies to this section.

(d) Qualifying Owner. – For the purpose of qualifying for the property tax homestead circuit breaker under this section, a qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) The owner has an income for the preceding calendar year of not more than one hundred fifty percent (150%) of the income eligibility limit specified in subsection (c) of this section.

(2) The owner has owned and occupied the property as a permanent residence for at least five years.

(3) The owner is at least 65 years of age or totally and permanently disabled.

(4) The owner is a North Carolina resident.

(e) Multiple Owners. – A permanent residence owned and occupied by husband and wife as tenants by the entirety is entitled to the full benefit of the property tax homestead circuit breaker notwithstanding that only one of them meets the occupation requirement and the age or disability requirement of this section. When a permanent residence is owned and occupied by two or more persons other than husband and wife, no property tax homestead circuit breaker is allowed unless all of the owners qualify and elect to defer taxes under this section.

(f) Tax Limitation. – A qualifying owner may defer the portion of tax imposed on his or her permanent residence if it exceeds ~~a~~ the percentage of the qualifying owner's income ~~as provided in this section.~~set out in the table in this subsection. If a permanent residence is subject to tax by more than one taxing unit and the total tax liability exceeds the tax limit imposed by this section, then both the taxes due under this section and the taxes deferred under this section must be apportioned among the taxing units based upon the ratio each taxing unit's tax rate bears to the total tax rate of all units.

~~**Income**~~	~~**Percentage**~~
~~Less than the income eligibility limit~~	~~4.0%~~
~~100% to 150% of the income eligibility limit~~	~~5.0%~~

Income Over	**Income Up To**	**Percentage**
-0-	Income Eligibility Limit	4.0%
Income Eligibility Limit	150% of Income Eligibility Limit	5.0%

(g) Temporary Absence. – An otherwise qualifying owner does not lose the benefit of this circuit breaker because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(h) Deferred Taxes. – The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes for the three fiscal years preceding the current tax year shall be carried forward in the records of the taxing unit or units as deferred taxes. ~~Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due.~~ The deferred taxes are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral because of the occurrence of a disqualifying event as provided in subsection (i) of this section. On or before September 1 of each year, the ~~assessor~~ collector shall notify each residence owner to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest.

(i) Disqualifying Events. – ~~Taxes deferred under this section are payable within nine months after a disqualifying event. The tax for the fiscal year that opens in a calendar year in which deferred taxes become due is computed as if the property was not eligible for property tax relief under this section.~~ Each of the following constitutes a disqualifying event:

(1) The owner transfers the residence. Transfer of the residence ~~under this subdivision~~ is not a disqualifying event if (i) the owner transfers the residence ~~as part of a divorce proceeding~~ to a co-owner of the residence or, as part of a divorce proceeding, to ~~either~~ his or her spouse ~~who qualifies for tax deferral under this section or to a co-owner of the residence,~~and (ii) that individual occupies or continues to occupy the property as his or her permanent ~~residence, and (iii) that individual elects to continue deferring payment of the tax.~~residence.

(2) The owner dies. Death of the owner ~~under this subdivision~~ is not a disqualifying event if (i) the owner's share passes to ~~either~~a co-owner of the residence or to his or her spouse ~~who qualifies for tax deferral under this section or to a co-owner of the residence,~~residence and (ii) that individual occupies or continues to occupy the property as his or her permanent ~~residence, and (iii) that individual elects to continue deferring payment of the tax.~~residence.

(3) The owner ceases to use the property as a permanent residence.

(j) ~~Interruption of Qualification. – If the owner of a tax-deferred residence does not qualify under this section for deferral as of January 1 preceding a taxable year for reasons other than a disqualifying event or if the owner of a tax-deferred residence revokes an application for deferral by notifying the assessor in writing, the owner may not defer any additional property taxes under this section without submitting a new application. Deferred taxes from earlier years do not become due because of an interruption of qualification; however, deferred taxes existing at the time of an interruption of qualification shall be carried forward until the occurrence of a disqualifying event. If the owner qualifies for tax deferral under this section following an interruption of qualification, the taxing unit or units shall disregard the years during which there was an interruption of qualification for purposes of determining the three fiscal years preceding the current tax year under subsection (g) of this section.~~Gap in Deferral. – If an owner of a residence on which taxes have been deferred under this section is not eligible for continued deferral for a tax year, the taxes deferred from the prior tax years are not due and payable but are carried forward until a disqualifying event occurs. If the owner of the residence qualifies for deferral after one or more years in which he or she did not qualify for deferral, the years in which the owner did not qualify are disregarded in determining the three years for which the deferred taxes are carried forward.

~~(k) Prepayment. – All or part of the deferred taxes and accrued interest may be paid to the tax collector at any time. Any partial payment is applied first to accrued interest. A residence owner to whom a tax deferral has previously been granted may revoke the application for deferral at any time by notifying the assessor in writing.~~

(l) Creditor Limitations. – A mortgagee or trustee that elects to pay any tax deferred by the owner of a residence subject to a mortgage or deed of trust does not acquire a right to foreclose as a result of the election. Except for requirements dictated by federal law or regulation, any provision in a mortgage, deed of trust, or other agreement that prohibits the owner from deferring taxes on property under this section is void.

(m) Construction. – This section does not affect the attachment of a lien for personal property taxes against a tax-deferred residence.

(n) Application. – An application for property tax relief provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the relief is claimed. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1."

SECTION 1.3. G.S. 105-282.1(a)(2)(e) is repealed.

SECTION 1.4. G.S. 153A-148.1(a) is amended by adding a new subdivision to read:

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

…

(6) To include on a property tax receipt the amount of property taxes due and the amount of property taxes deferred on a residence classified under G.S. 105-277.1B, the property tax homestead circuit breaker."

SECTION 1.5. G.S. 160A-208.1(a) is amended by adding a new subdivision to read:

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

…

(4) To include on a property tax receipt the amount of property taxes due and the amount of property taxes deferred on a residence classified under G.S. 105-277.1B, the property tax homestead circuit breaker."

PART II: DEFERRAL PROGRAM MODIFICATIONS

SECTION 2.1. G.S. 105-275(29a) reads as rewritten:

"**§ 105-275. Property classified and excluded from the tax base.**

The following classes of property are hereby designated special classes under authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be listed, appraised, assessed, or taxed:

...

(29a) Land that is within an historic district ~~held,~~and is held by a nonprofit corporation organized for historic preservation ~~purposes,~~purposes for use as a future site for an historic structure that is to be moved to the site from another location. Property may be classified under this subdivision for no more than five years. The taxes that would otherwise be due on land classified under this subdivision shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred ~~taxes and shall be payable five years from the fiscal year the exclusion is first claimed unless an historic structure is moved onto the site during that time. If an historic structure has not been moved to the site within five years, then deferred taxes for the preceding five fiscal years shall immediately be payable, together with interest as provided in G.S. 105-360 for unpaid taxes that shall accrue on the deferred taxes as if they had been payable on the dates on which they would originally become due. All liens arising under this subdivision are extinguished upon either the payment of any deferred taxes under this subdivision or the location of an historic structure on the site within the five-year period allowed under this subdivision.~~taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when an historic structure is not moved to the property within five years from the first day of the fiscal year the property was classified under this subdivision."

SECTION 2.2. Chapter 105 of the North Carolina General Statutes is amended by adding a new section to read:

"**§ 105-277.1C. Uniform provisions for payment of deferred taxes.**

(a) Scope. – This section applies to the following deferred tax programs:

(1) G.S. 105-275(29a), historic district property held as future site of historic structure.

(2) G.S. 105-277.1B, the property tax homestead circuit breaker.

(3) G.S. 105-277.4(c), present-use value property.

(4) G.S. 105-277.14, working waterfront property.

(5) G.S. 105-278(b), historic property.

(6) G.S. 105-278.6(e), nonprofit property held as future site of low- or moderate-income housing.

(b) Payment. – Taxes deferred on property under a deferral program listed in subsection (a) of this section are due and payable on the day the property loses its eligibility for the deferral program as a result of a disqualifying event. If only a part of property for which taxes are deferred loses its eligibility for deferral, the assessor must determine the amount of deferred taxes that apply to that part and that amount is due and payable. Interest accrues on deferred taxes as if they had been payable on the dates on which they would have originally become due.

The tax for the fiscal year that begins in the calendar year in which the deferred taxes are due and payable is computed as if the property had not been classified for that year. A lien for deferred taxes is extinguished when the taxes are paid.

All or part of the deferred taxes that are not due and payable may be paid to the tax collector at any time without affecting the property's eligibility for deferral. A partial payment is applied first to accrued interest."

SECTION 2.3. G.S. 105-277.4(c) reads as rewritten:

"(c) Deferred Taxes. – Land meeting the conditions for classification under G.S. 105-277.3 must be taxed on the basis of the value of the land for its present use. The difference between the taxes due on the present-use basis and the taxes that would have been payable in the absence of this classification, together with any interest, penalties, or costs that may accrue thereon, are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes must be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the land fails to meet any condition or requirement for classification or when an application is not approved. ~~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, 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.~~"

SECTION 2.4. G.S. 105-277.14(c) reads as rewritten:

"(c) Deferred Taxes. – The difference between the taxes that are due on working waterfront property taxed on the basis of its present use and that would be due if the property were taxed on the basis of its true value is a lien on the property. The difference in taxes must be carried forward in the records of each taxing unit as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the property no longer qualifies as working waterfront property. ~~The deferred taxes become due when the property no longer qualifies as working waterfront property. The tax for the fiscal year that opens in the calendar year in which deferred taxes become due is computed as if the property 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 property no longer qualifies as working waterfront property, the assessor must determine the amount of deferred taxes applicable to that part and that amount becomes payable with interest. Upon the payment of any taxes deferred under this section for the three years immediately preceding a disqualification, all liens arising under this subsection are extinguished.~~"

SECTION 2.5. G.S. 105-278(b) reads as rewritten:

"(b) The difference between the taxes due on the basis of fifty percent (50%) of the true value of the property and the taxes that would have been payable in the absence of the classification provided for in subsection (a) shall be a lien on the property of the taxpayer as provided in ~~G.S. 105-355(a) and~~G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred ~~taxes, but shall not be payable until the property loses its eligibility for the benefit of this classification because of a change in an ordinance designating a historic property or a change in the property, except by fire or other natural disaster, which causes its historical significance to be lost or substantially impaired.~~taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1C when the property loses the benefit of this classification as a result of a disqualifying event. A disqualifying event occurs when there is a change in an ordinance designating a historic property or a change in the property, other than by fire or other natural disaster, that causes the property's historical significance to be lost or substantially impaired. ~~The tax for the fiscal year that opens in the calendar year in which a disqualification occurs shall be computed as if the property had not been classified for that year, and taxes for the preceding three fiscal years that have been deferred as provided herein shall be payable immediately, together with interest thereon as provided in G.S. 105-360 for unpaid taxes, which shall accrue on the deferred taxes as if they had been payable on the dates on which they originally became due. If only a part of the historic property loses its eligibility for the classification, a determination shall be made of the amount of deferred taxes applicable to that part, and the amount shall be payable with interest as provided above.~~"

SECTION 2.6. G.S. 105-278.6(e) reads as rewritten:

"(e) Real property held by an organization described in subdivision (a)(8) ~~is held~~ for a charitable purpose under this section ~~if it is held for no more than five years~~ as a future site for housing for individuals or families with low or moderate ~~incomes.~~incomes may be classified under this section for no more than five years. The taxes that would otherwise be due on real property exempt under this subsection shall be a lien on the property as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit as deferred ~~taxes and shall be payable five years after the tax year the exemption is first claimed unless the organization has constructed low- or moderate-income housing on the site. If this condition has not been met, the deferred taxes for the preceding five fiscal years shall be payable immediately, together with interest as provided in G.S. 105-360 for unpaid taxes that accrues on the deferred taxes~~

~~as if they had been payable on the dates they would have originally become due. All liens arising under this subsection are extinguished upon one of the following:~~

~~(1) Payment of all deferred taxes under this subsection.~~

~~(2) Construction by the organization of low- or moderate-income housing on the site within five years after the tax year the exemption is first claimed.~~taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the organization fails to construct low- or moderate-income housing on the site within five years from the first day of the fiscal year the property was classified under this subsection."

SECTION 2.7. G.S. 105-360(a) reads as rewritten:

"(a) Taxes levied under this Subchapter by a taxing unit are due and payable on September 1 of the fiscal year for which the taxes are levied. Taxes are payable at par or face amount if paid before January 6 following the due date. Taxes paid on or after January 6 following the due date ~~are delinquent and~~ are subject to interest charges. Interest accrues on taxes paid on or after January 6 as follows:

(1) For the period January 6 to February 1, interest accrues at the rate of two percent ~~(2%); and~~(2%).

(2) For the period February 1 until the principal amount of the taxes, the accrued interest, and any penalties are paid, interest accrues at the rate of three-fourths of one percent (3/4%) a month or fraction thereof."

SECTION 2.8. Article 26 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-365.1. When and against whom collection remedies may be used.**

(a) Date of Delinquency. – A tax collector may collect a tax using the remedies provided in G.S. 105-366 through G.S. 105-375 on or after the date the tax is delinquent. A tax is delinquent on the following date:

(1) For a tax that is not a deferred tax, the date the tax accrues interest.

(2) For a deferred tax, other than a tax described in subdivision (3) of this section, the date a disqualifying event occurs.

(3) For a deferred tax under G.S. 105-277.1B that lost its eligibility for deferral due to the death of the owner, the first day of the sixth month following the date of death."

(b) Enforced Collection. – For purposes of using the collection remedies provided in G.S. 105-366 through G.S. 105-375 to collect delinquent taxes, the taxing unit shall proceed against property of the following taxpayer:

(1) To collect delinquent taxes assessed on real property, the owner of record of property on which tax is due as of the date of delinquency and any subsequent owner of record of the property.

(2) To collect delinquent taxes assessed on personal property, the owner of record as of January 1 of the calendar year in which the fiscal year of taxation begins.

(3) To collect delinquent taxes assessed on a registered motor vehicle, the owner of record as of the date on which the current vehicle registration is renewed or the date on which a new registration is applied for."

PART III: TECHNICAL CORRECTION

SECTION 3. G.S. 105-277.1(a2) reads as rewritten:

"(a2) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2008)** Income Eligibility Limit. – ~~Until~~ For the taxable year beginning on July 1, 2008, the income eligibility limit is twenty-five thousand dollars ($25,000). For taxable years beginning on or after July 1, ~~2008,~~2009, the income eligibility limit is the amount for the preceding year, adjusted by the same percentage of this amount as the percentage of any cost-of-living adjustment made to the benefits under Titles II and XVI of the Social Security Act for the preceding calendar year, rounded to the nearest one hundred dollars ($100.00). On or before July 1 of each year, the Department of Revenue must determine the income eligibility amount to be in effect for the taxable year beginning the following July 1 and must notify the assessor of each county of the amount to be in effect for that taxable year."

PART IV: EFFECTIVE DATE

SECTION 4. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2008.

BILL ANALYSIS

BILL DRAFT 2007-MCxz-195C: Deferred Property Tax Programs Changes

Committee:	Revenue Laws Study Committee	**Date:**	April 9, 2008
Introduced by:		**Summary by:**	Dan Ettefagh
Version:	Bill Draft		Committee Counsel

SUMMARY: This legislative proposal would make certain modifications to the circuit breaker tax benefit, as recommended by the Department of Revenue, the School of Government, and county assessors and collectors, to ease the administration and implementation of the program; would create a new statutory section to collect and synchronize administration of all of North Carolina's property tax deferral programs; would create a new statutory section to collect and simplify statutory treatment of enforced collection remedies; and would make other necessary technical, clarifying, and conforming changes.

BILL ANALYSIS:

Circuit Breaker Tax Deferral Program

In 2007, the General Assembly enacted a new property tax deferral benefit for North Carolina residents who have owned and occupied property located in the State as a permanent residence for at least five years and are either 65 years of age or older or totally and permanently disabled, to go into effect for the 2009-2010 fiscal year. An owner who meets the requirements of the circuit breaker benefit and makes less than the income eligibility limit of the homestead exclusion may defer the portion of taxes imposed on the permanent residence that exceeds four percent (4%) of the owner's income. An owner who meets the requirements of the circuit breaker benefit and makes between the income eligibility limit and one and one-half times the income eligibility limit may defer the portion of taxes imposed on the permanent residence that exceeds five percent (5%) of the owner's income.

The proposal would make four substantive changes to the circuit breaker program:

- First, it would transfer the responsibility for notifying qualifying owners of the cumulative amount of deferred taxes, including interest, to the tax collector. Under current law, the tax assessor must make this required notification. In those areas where a town, e.g., has a separate tax collector, the assessor usually does not have access to all the information required to make the notification, but the collector does. Moreover, the collector can merely include this information with the tax bill that is sent out in July or August.
- Second, it would increase uniformity regarding when enforced collection remedies become available to a taxing unit following a disqualifying event. Under current law, taxes deferred under the circuit breaker program accrue interest, become a lien on the real property, and are carried forward until one of three disqualifying events occurs: death of the owner, transfer of the residence by the owner, or cessation of use of the residence as a permanent residence by the owner other than a qualifying temporary absence.[1] Upon the occurrence of a disqualifying event, the amount of taxes for that year with no circuit breaker benefit plus those taxes deferred for the preceding three fiscal years, together with interest, become due, but enforced collection remedies may not be utilized until nine months after the disqualifying

[1] An exception to this rule exists, allowing deferral to continue if the residence is transferred to a spouse or qualifying co-owner and that individual qualifies for deferral and elects to continue deferral.

event. This delay is unique among North Carolina's property tax deferral programs, and the proposal would modify the delay in two ways: first, it eliminates the delay in using the enforced collection remedies for all disqualifying events other than the owner's death, and second, it reduces the delay when the disqualifying event is the owner's death from nine months to the first day of the sixth month following the date of death.

- Third, it would convert the application process from a one-time application to an annual application. Under current law, the application process, like many eligibility thresholds and definitions, was modeled after the homestead exclusion. However, while eligibility for both programs is contingent on a taxpayer's income, the actual benefit received is a function of different variables: the property value for the exclusion versus the taxpayer's income for the circuit breaker. Since the amount of the circuit breaker tax benefit is a function of the taxpayer's income, annual reporting of income is necessary for the county to prepare the tax bill.
- Fourth, it would create an exception to the general prohibition regarding access to public records that contain information about a taxpayer's income in order to allow agents of a county to disclose on a property tax receipt the amount of property taxes due and deferred. Under current law, G.S. 132-1.1 prohibits disclosure of local tax records that contain information about a taxpayer's income. Since the amount of taxes that can be deferred under the program is a function of income and since counties make property tax records public, one could use the amount of deferred taxes to calculate a qualifying owner's income, thus necessitating an exception to permit continuation of current practice.

The proposal also makes the following clarifying, conforming, or technical changes:

- It synchronizes the income eligibility limit for the 4% benefit under the circuit breaker program with the income eligibility limit for the homestead exclusion. Under current law, there is a one penny discrepancy between these income limits.
- It modernizes G.S. 105-273 to use current drafting practices for definitions (Section 1.1).
- It eliminates surplus language that would be redundant to the newly created statutory sections for the uniform provisions for tax deferral programs or enforced collection remedies (Sections 1.1 and 1.2).
- It adds language to the qualification requirements to match the classification language (Section 1.2).
- It adds language regarding multiple owners to match the language found in the homestead exclusion (Section 1.2).
- It clarifies that language regarding exceptions to disqualifying events (Section 1.2).
- It makes necessary conforming changes to accommodate an annual application system (Section 1.2).

<u>Uniform Provisions for Deferred Property Tax Programs</u>

North Carolina has six property tax deferral programs: (i) historic district property held as future site of historic structures (G.S. 105-275(29a)), the circuit breaker tax deferral program (G.S. 105-277.1B), (iii) nonprofit property held as future site of low- or moderate-income housing (G.S. 105-278.6(e)), (iv) present-use value property (G.S. 105.277.4(c)), (v) working waterfront property (G.S. 105-277.14), and (vi) historic property (G.S. 105-278(b)). The proposal sets forth a series of six suggested uniform provisions, to be collected in one newly created statutory section, to reduce redundant statutory language and to eliminate disparity in terminology and administration. Those six provisions are as follows:

- Deferred taxes are due and payable on the day the property loses its eligibility for deferral as a result of a disqualifying event. This provision represents no change in current law for any of the deferral programs.

- Interest accrues as of the date the taxes would have originally become due without the deferral program. This provision represents no change in current law for any of the deferral programs.

- The tax for a year in which a disqualifying event occurs is computed without the benefit of the deferral program. This provision represents no change in current law for any of the deferral programs.

- Liens resulting from deferred taxes are extinguished when the taxes are paid. This provision represents no change in current law for any of the deferral programs.

- If part of a property on which taxes are deferred loses eligibility, the assessor determines the amount of deferred taxes that apply to that part and that amount is due and payable. Under current law, only some of the deferral programs permit partial loss of eligibility; the other programs (namely, future historic site, future low- or moderate-income housing site, and the circuit breaker) are an all-or-nothing system. The proposal would make each of the programs conform to permitting partial loss of eligibility.

- All or part of taxes deferred may be paid at any time without affecting deferral eligibility, and partial payments are applied first to accrued interest, not the principal. The Department's construction of current law is that a taxpayer cannot make a partial payment of taxes deferred from previous years without withdrawing the property from the deferral program. This effectively forced a taxpayer to choose between paying down any accrued deferred taxes on eligible property and keeping the property in the deferral program. The proposal would eliminate this disincentive and permit payment against accrued taxes and interest.

<u>Enforced Collection Remedies</u>

Under current law, statutory provisions relevant to when and against whom a taxing unit may utilize enforced collection remedies are interspersed over a span of 100 statutory sections, including the definition of taxpayer. The proposal would create a second new statutory section that would collect and centrally lay out these provisions. The proposal sets up two sets of three rules. The first set of rules equates the date of delinquency with the date enforced collection remedies may be used and provides:

- For normal taxes, the date of delinquency is the date the tax accrues interest. Under G.S. 105-360, that date is January 6th.

- For deferred taxes other than the circuit breaker where the disqualifying event is the death of the owner, the date of delinquency is the date a disqualifying event occurs.

- For deferred taxes under the circuit breaker where the disqualifying event is the death of the owner, the date of delinquency is the first day of the sixth month following the date of death.

The second set of rules provides against whom enforced collection remedies may be used (based on property type):

- For delinquent taxes on real property, the taxing unit may proceed against the owner of record as of the date of delinquency and any subsequent owner.

- For delinquent taxes on personal property, the taxing unit may proceed against the owner of record as of January 1 of the calendar year in which the fiscal year of taxation begins.

- For delinquent taxes on registered motor vehicles, the taxing unit may proceed against the owner of record as of the date on which the current vehicle registration is renewed or the date on which a new registration is applied for.

Homestead Exclusion Technical Correction

Part III of the proposal would make a technical correction to the taxable year the income eligibility limit for the homestead exclusion is raised. Last year, the General Assembly passed legislation to raise the income eligibility limit for the homestead exclusion to $25,000. That increase was supposed to take effect for taxable years beginning on July 1, 2008. An error in the effective date precludes that effect, and the proposal substitutes appropriate language to accomplish the intent of the original bill.

EFFECTIVE DATE: The proposal would be effective for taxes imposed for taxable years beginning on or after July 1, 2008.

2007-MCxz-195C-SMMC

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

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 6, 2008

TO: Revenue Laws Study Committee

FROM: Rodney Bizzell
Fiscal Research Division

RE: 2007-MCxz-195C

FISCAL IMPACT

Yes ( ) **No (x)** **No Estimate Available ( )**

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
REVENUES:					
General Fund	***No General Fund Impact***				
Local Governments	***No Significant Impact***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Local Governments; NC Department of Revenue

EFFECTIVE DATE: Taxable years beginning July 1, 2008.

BILL SUMMARY:
This legislative proposal would make certain modifications to the circuit breaker tax benefit, as recommended by the Department, the School of Government, and county assessors and collectors, to ease the administration and implementation of the program. The bill also creates a new statutory section to collect and synchronize administration of all of North Carolina's property tax deferral programs and creates a new statutory section to collect and simplify statutory treatment of enforced collection remedies. The bill also makes other necessary technical, clarifying, and conforming changes.

ASSUMPTIONS AND METHODOLOGY:
In 2007, the General Assembly enacted a new property tax deferral benefit for North Carolina residents who have owned and occupied property located in the State as a permanent residence for at least five years and are either 65 years of age or older or totally and permanently disabled, to go into effect for the 2009-2010 fiscal year. An owner who meets the requirements of the circuit breaker benefit and makes less than the income eligibility limit of the homestead exclusion may defer the portion of taxes imposed on the permanent residence that exceeds four percent (4%) of their income. An owner who meets the requirements of the circuit breaker benefit and makes between the income eligibility limit and one and one-half times the income eligibility limit may defer the portion of taxes imposed on the permanent residence that exceeds five percent (5%) of the owner's income.

The proposal would make four substantive changes to the circuit breaker program:

- First, it would transfer the responsibility for notifying qualifying owners of the cumulative amount of deferred taxes, including interest, to the tax collector. Under current law, the tax assessor must make this required notification. In those areas where a town, e.g., has a separate tax collector, the assessor usually does not have access to all the information required to make the notification, but the collector does. Moreover, the collector can merely include this information with the tax bill that is sent out in July and August.
- Second, it would increase uniformity regarding when enforced collection remedies become available to a taxing unit following a disqualifying event. Under current law, taxes deferred under the circuit breaker program accrue interest, become a lien on the real property, and are carried forward until one of three disqualifying events occurs: death of the owner, transfer of the residence by the owner, or cessation of use of the residence as a permanent residence by the owner other than a qualifying temporary absence.[1] Upon the occurrence of a disqualifying event, the amount of taxes for that year with no circuit breaker benefit plus those taxes deferred for the preceding three fiscal years, together with interest, become due, but enforced collection remedies may not be utilized until nine months after the disqualifying event. This delay is unique among North Carolina's property tax deferral programs, and the proposal would modify the delay in two ways: first, it eliminates the delay in using the enforced collection remedies for all disqualifying events other than the owner's death, and second, it reduces the delay when the disqualifying event is the owner's death from nine months to the first day of the sixth month following the date of death.
- Third, it would convert the application process from a one-time application to an annual application. Under current law, the application process, like many eligibility thresholds and definitions, was modeled after the homestead exclusion. However, while eligibility for both programs is contingent on a taxpayer's income, the actual benefit received is a function of different variables: the property value for the exclusion versus the taxpayer's income for the circuit breaker. Since the amount of the circuit breaker tax benefit is a function of the taxpayer's income, annual reporting of income is necessary for the county to prepare the tax bill.
- Fourth, it would create an exception to the general prohibition regarding access to public records that contain information about a taxpayer's income in order to allow agents of a county to disclose on a property tax receipt the amount of property taxes due and deferred. Under current law, G.S. 132-1.1 prohibits disclosure of local tax records that contain information about a taxpayer's income. Since the amount of taxes that can be deferred under the program is a function of income and since counties make property tax records public, one

[1] An exception to this rule exists, allowing deferral to continue if the residence is transferred to a spouse or qualifying co-owner and that individual qualifies for deferral and elects to continue deferral.

could use the amount of deferred taxes to calculate a qualifying owner's income, thus necessitating an exception to permit continuation of current practice.

The remaining proposed changes are clarifying or technical in nature. None of the proposed changes are expected to have any significant fiscal impact.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #6

PROPERTY TAX MODIFICATIONS

LEGISLATIVE PROPOSAL #6

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO MODIFY THE SCHEDULE FOR GENERAL REAPPRAISALS OF REAL PROPERTY IN THE STATE TO REDUCE THE DISCREPANCY BETWEEN THE PROPERTY TAX VALUE OF PROPERTY AND ITS MARKET VALUE, TO TREAT MOBILE HOMES THE SAME AS OTHER HOMES WITH RESPECT TO PROPERTY TAX LIENS, TO MODIFY THE OWNERSHIP REQUIREMENTS OF PRESENT-USE VALUE PROPERTY TO REFLECT COMMON FORMS OF LAND OWNERSHIP, AND TO ALLOW PROPERTY TO REMAIN IN PRESENT-USE VALUE WHEN THE DEFERRED TAXES ARE PAID AT THE TIME OF TRANSFER AND THE NEW OWNER CONTINUES TO FARM THE PROPERTY.

SHORT TITLE: Property Tax Modifications.

SPONSORS:

BRIEF OVERVIEW: This proposal would change the current, staggered octennial schedule for general reappraisals to a staggered quadrennial schedule, would eliminate horizontal adjustments, would treat mobile home liens the same as tax liens on other homes, would modify the present-use value ownership requirements to reflect common forms of land ownership for estate planning purposes, and would allow property to remain in present-use value when deferred taxes are paid at the time of transfer and the new owner continues to farm the land and files an application for present-use value status.

FISCAL IMPACT: The draft bill contains no provisions that are expected to have any significant fiscal impact on local governments. The provisions of the draft bill changing the treatment of mobile home liens is expected to generate between $2.5 and $5 million in additional revenue to local governments.

EFFECTIVE DATE: The provisions of this act changing the revaluation schedule would be effective July 1, 2011, and would apply to taxes imposed for taxable years beginning on or after that date. The provisions of this act changing the treatment of mobile home liens would be effective for taxable years beginning on or after July 1, 2009. The provisions of the act modifying the present-use value statutes would be effective for taxes imposed for taxable years beginning on or after July 1, 2008.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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BILL DRAFT 2007-LAxz-20 [v.9] (4/25)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/5/2008 4:17:12 PM

Short Title:	Property Tax Modifications.	(Public)
Sponsors:	Unknown.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE SCHEDULE FOR GENERAL REAPPRAISALS OF REAL PROPERTY IN THE STATE TO REDUCE THE DISCREPANCY BETWEEN THE PROPERTY TAX VALUE OF PROPERTY AND ITS MARKET VALUE, TO TREAT MOBILE HOMES THE SAME AS OTHER HOMES WITH RESPECT TO PROPERTY TAX LIENS, TO MODIFY THE OWNERSHIP REQUIREMENTS OF PRESENT-USE VALUE PROPERTY TO REFLECT COMMON FORMS OF LAND OWNERSHIP, AND TO ALLOW PROPERTY TO REMAIN IN PRESENT-USE VALUE WHEN THE DEFERRED TAXES ARE PAID AT THE TIME OF TRANSFER AND THE NEW OWNER CONTINUES TO FARM THE PROPERTY.

The General Assembly of North Carolina enacts:

PART I: REAPPRAISAL SCHEDULE

SECTION 1.1. G.S. 105-282.1(e) reads as rewritten:

"(e) Annual Review of Exempted or Excluded Property. – Pursuant to G.S. 105-296(l), the assessor must annually review at least ~~one-eighth~~one-fourth of the parcels in the county exempted or excluded from taxation to verify that the parcels qualify for the exemption or exclusion."

SECTION 1.2. G.S. 105-284(b) reads as rewritten:

"(b) The assessed value of public service company system property subject to appraisal by the Department of Revenue under G.S. 105-335(b)(1) shall be determined by applying to the allocation of such value to each county a percentage to be established by the Department of Revenue. The percentage to be applied shall be either:

(1) The median ratio established in sales assessment ratio studies of real property conducted by the Department of Revenue in the county in the

year the county conducts a reappraisal of real ~~property and in the fourth and seventh years thereafter; or~~ property.

(2) A weighted average percentage based on the median ratio for real property established by the Department of Revenue as provided in subdivision (1) and a one hundred percent (100%) ratio for personal property. No percentage shall be applied in a year in which the median ratio for real property is ninety percent (90%) or greater.

If the median ratio for real property in any county is below ninety percent (90%) and if the county assessor has provided information satisfactory to the Department of Revenue that the county follows accepted guidelines and practices in the assessment of business personal property, the weighted average percentage shall be applied to public service company property. In calculating the weighted average percentage, the Department shall use the assessed value figures for real and personal property reported by the county to the Local Government Commission for the preceding year. In any county which fails to demonstrate that it follows accepted guidelines and practices, the percentage to be applied shall be the median ratio for real property. The percentage established in a year in which a sales assessment ratio study is conducted shall continue to be applied until another study is conducted by the Department of Revenue."

SECTION 1.3. G.S. 105-286 reads as rewritten:

"**§ 105-286. Time for general reappraisal of real property.**

~~(a) Octennial Plan. – Unless the date shall be advanced as provided in subdivision (a)(2), below, each county of the State, as of January 1 of the year prescribed in the schedule set out in subdivision (a)(1), below, and every eighth year thereafter, shall reappraise all real property in accordance with the provisions of G.S. 105-283 and 105-317.~~

~~(1) Schedule of Initial Reappraisals. –~~

~~Division One – 1972: Avery, Camden, Cherokee, Cleveland, Cumberland, Guilford, Harnett, Haywood, Lee, Montgomery, Northampton, and Robeson.~~

~~Division Two – 1973: Caldwell, Carteret, Columbus, Currituck, Davidson, Gaston, Greene, Hyde, Lenoir, Madison, Orange, Pamlico, Pitt, Richmond, Swain, Transylvania, and Washington. Division Three – 1974: Ashe, Buncombe, Chowan, Franklin, Henderson, Hoke, Jones, Pasquotank, Rowan, and Stokes. Division Four – 1975: Alleghany, Bladen, Brunswick, Cabarrus, Catawba, Dare, Halifax, Macon, New Hanover, Surry, Tyrrell, and Yadkin. Division Five – 1976: Bertie, Caswell, Forsyth, Iredell, Jackson, Lincoln, Onslow, Person, Perquimans, Rutherford, Union, Vance, Wake, Wilson, and Yancey.~~

~~Division Six – 1977: Alamance, Durham, Edgecombe, Gates, Martin, Mitchell, Nash, Polk, Randolph, Stanly, Warren, and Wilkes.~~

~~Division Seven – 1978: Alexander, Anson, Beaufort, Clay, Craven, Davie, Duplin, and Granville.~~

~~Division Eight – 1979: Burke, Chatham, Graham, Hertford, Johnston, McDowell, Mecklenburg, Moore, Pender, Rockingham, Sampson, Scotland, Watauga, and Wayne.~~

~~(2) Advancing Scheduled Octennial Reappraisal. – Any county desiring to conduct a reappraisal of real property earlier than required by this subsection (a) may do so upon adoption by the board of county commissioners of a resolution so providing. A copy of any such resolution shall be forwarded promptly to the Department of Revenue. If the scheduled date for reappraisal for any county is advanced as provided herein, real property in that county shall thereafter be reappraised every eighth year following the advanced date unless, in accordance with the provisions of this subdivision (a)(2), an earlier date shall be adopted by resolution of the board of county commissioners, in which event a new schedule of octennial reappraisals shall thereby be established for that county.~~

~~(b) Fourth-Year Horizontal Adjustments. – As of January 1 of the fourth year following a reappraisal of real property conducted under the provisions of subsection (a), above, each county shall review the appraised values of all real property and determine whether changes should be made to bring those values into line with then current true value. If it is determined that the appraised value of all real property or of defined types or categories of real property require such adjustment, the assessor shall revise the values accordingly by horizontal adjustments rather than by actual appraisal of individual properties: That is, by uniform application of percentages of increase or reduction to the appraised values of properties within defined types or categories or within defined geographic areas of the county.~~

~~(c) Value to Be Assigned Real Property When Not Subject to Appraisal. – In years in which real property within a county is not subject to appraisal or reappraisal under subsections (a) or (b),above, or under G.S. 105-287, it shall be listed at the value assigned when last appraised under this section or under G.S. 105-287.~~

(a) Quadrennial Plan. – Each county must reappraise all real property in accordance with the provisions of G.S. 105-283 and G.S. 105-317 as of January 1 of the year set out in the following schedule and every fourth year thereafter, unless the county advances the date as provided in subsection (b):

Year	**Initial Reappraisal Schedule**
2011	Alexander, Ashe, Brunswick, Burke, Carteret, Catawba, Cumberland, Gaston, Henderson, Hertford, Iredell, Johnston, Lee, Macon, McDowell, Moore, New Hanover, Northampton, Pender, Rowan, Rutherford, Sampson, Scotland, Wayne, and Wilkes.
2012	Bertie, Carbarrus, Caswell, Cherokee, Cleveland, Columbus, Currituck, Greene, Guilford, Jackson, Lincoln,

	Madison, Montgomery, Pamlico, Perquimans, Pitt, Randolph, Richmond, Surry, Union, Vance, Washington, Wilson, and Yancey.
2013	Alamance, Caldwell, Chatham, Davie, Duplin, Edgecombe, Forsyth, Gates, Harnett, Hyde, Lenoir, Martin, Mecklenburg, Mitchell, Nash, Orange, Person, Polk, Rockingham, Stanly, Stokes, Swain, Transylvania, Tyrell, Wake, Warren, and Yadkin.
2014	Alleghany, Anson, Avery, Beaufort, Bladen, Buncombe, Camden, Chowan, Clay, Craven, Dare, Davidson, Durham, Franklin, Graham, Granville, Halifax, Haywood, Hoke, Jones, Onslow, Pasquotank, Robeson, and Watauga.

(b) Advancing Scheduled Reappraisal. – A county may conduct a reappraisal of real property earlier than required by subsection (a) of this section if the board of county commissioners adopts a resolution providing for advancement of the scheduled reappraisal. The board of county commissioners must promptly forward a copy of any adopted resolution advancing the scheduled reappraisal to the Department of Revenue. If a county advances the scheduled reappraisal under this subsection, the county must conduct future reappraisals every fourth year following the advanced date unless, in accordance with this subsection, the county adopts an earlier date by resolution."

SECTION 1.4. G.S. 105-287 reads as rewritten:

"**§ 105-287. Changing appraised value of real property in years in which general reappraisal ~~or horizontal adjustment~~ is not made.**

(a) In a year in which a general reappraisal ~~or horizontal adjustment~~ of real property in the county is not ~~made,~~made under G.S. 105-286, the property shall be listed at the value assigned when last appraised unless the value is changed in accordance with this section. ~~the~~ The assessor shall increase or decrease the appraised value of real property, as determined under G.S. 105-286, to recognize a change in the property's value resulting from one or more of the ~~reasons listed in this subsection. The reason necessitating a change in the property's value need not be under the control of or at the request of the owner of the affected property.~~following reasons:

(1) Correct a clerical or mathematical error.

(2) Correct an appraisal error resulting from a misapplication of the schedules, standards, and rules used in the county's most recent general ~~reappraisal or horizontal adjustment.~~reappraisal.

(2a) Recognize an increase or decrease in the value of the property resulting from a conservation or preservation agreement subject to

Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act.

(2b) Recognize an increase or decrease in the value of the property resulting from a physical change to the land or to the improvements on the land, other than a change listed in subsection (b) of this section.

(2c) Recognize an increase or decrease in the value of the property resulting from a change in the legally permitted use of the property.

(3) Recognize an increase or decrease in the value of the property resulting from a factor other than one listed in subsection (b).

(b) In a year in which a general reappraisal ~~or horizontal adjustment~~ of real property in the county is not made, the assessor may not increase or decrease the appraised value of real property, as determined under G.S. 105-286, to recognize a change in value caused by:

(1) Normal, physical depreciation of improvements;

(2) Inflation, deflation, or other economic changes affecting the county in general; or

(3) Betterments to the property made by:

a. Repainting buildings or other structures;

b. Terracing or other methods of soil conservation;

c. Landscape gardening;

d. Protecting forests against fire; or

e. Impounding water on marshland for non-commercial purposes to preserve or enhance the natural habitat of wildlife.

(c) An increase or decrease in the appraised value of real property authorized by this section shall be made in accordance with the schedules, standards, and rules used in the county's most recent general ~~reappraisal or horizontal adjustment.~~reappraisal. An increase or decrease in appraised value made under this section is effective as of January 1 of the year in which it is made and is not retroactive. The reason for an increase or decrease in appraised value made under this section need not be under the control of or at the request of the owner of the affected property. This section does not modify or restrict the provisions of G.S. 105-312 concerning the appraisal of discovered property.

(d) Notwithstanding subsection (a), if a tract of land has been subdivided into lots and more than five acres of the tract remain unsold by the owner of the tract, the assessor may appraise the unsold portion as land acreage rather than as lots. A tract is considered subdivided into lots when the lots are located on streets laid out and open for travel and the lots have been sold or offered for sale as lots since the last appraisal of the property."

SECTION 1.5. G.S. 105-296(j) reads as rewritten:

"(j) The assessor must annually review at least ~~one eighth~~ one-fourth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor must review the eligibility of all parcels classified for taxation at present-use value in ~~an eight-year~~a four-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 Division of Forest Resources 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, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c). If the property loses its present-use value classification for failure to provide the requested information, the assessor must reinstate the property's present-use value classification when the owner submits the requested information within 60 days after the disqualification unless the information discloses that the property no longer qualifies for present-use value classification. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner. The owner may appeal the final decision of the assessor to the county board of equalization and review as provided in G.S. 105-277.4(b1).

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

SECTION 1.6. G.S. 105-296(l) reads as rewritten:

"(l) The assessor shall annually review at least ~~one-eighth~~one-fourth of the parcels in the county exempted or excluded from taxation to verify that these parcels qualify for the exemption or exclusion. By this method, the assessor shall review the eligibility of all parcels exempted or excluded from taxation in ~~an eight-year~~a four-year period. The assessor may require the owner of exempt or excluded property to make available for inspection any information reasonably needed by the assessor to verify that the property continues to qualify for the exemption or exclusion. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines that the owner failed to make the information requested available in the time required without good cause, then the property loses its exemption or exclusion. If the property loses its exemption or exclusion for failure to provide the requested information, the assessor must reinstate the property's exemption or exclusion when the owner makes the requested information available within 60 days after the disqualification unless the information discloses that the property is no longer eligible for the exemption or exclusion."

SECTION 1.7. G.S. 153A-150 reads as rewritten:

"**§ 153A-150. Reserve for ~~octennial~~ general reappraisal.**

Before the beginning of the fiscal year immediately following the effective date of ~~an octennial~~a general reappraisal of real property conducted as required by G.S. 105-286, the county budget officer shall present to the board of commissioners ~~an eight-year~~a budget for financing the cost of the next ~~octennial~~ general reappraisal. The budget shall estimate the cost of the reappraisal and shall propose a plan for raising the necessary funds in ~~eight~~ annual installments during the ~~next fiscal years,~~intervening years between general reappraisals, with all installments as nearly uniform as practicable. The board shall consider this budget, making any amendments to the budget it deems advisable, and shall adopt a resolution establishing a special reserve fund for the next ~~octennial~~ general reappraisal. In the budget ordinance of the first fiscal year of the plan, the board of commissioners shall appropriate to the special reappraisal reserve fund the amount set out in the plan for the first year's installment. When the county budget for each succeeding fiscal year is in preparation, the board shall review the ~~eight-year~~ reappraisal budget with the budget officer and shall amend it, if necessary, so that it will reflect the probable cost at that time of the reappraisal and will produce the necessary funds at the end of the ~~eight-year~~ intervening period. In the budget ordinance for each succeeding fiscal year, the board shall appropriate to the special reappraisal reserve fund the amount set out in the plan as due in that year.

Moneys appropriated to the special reappraisal reserve fund shall not be available or expended for any purpose other than the reappraisal of real property required by G.S. 105-286, except that the funds may be deposited at interest or invested as permitted by G.S. 159-30. If there is a fund balance in the reserve fund following payment for the required reappraisal, it shall be retained in the fund for use in financing the next required reappraisal.

Within 10 days after the adoption of each annual budget ordinance, the county finance officer shall report to the Department of Revenue, on forms to be supplied by the Department, the terms of the county's ~~eight-year~~ reappraisal budget, the current condition of the special reappraisal reserve fund, and the amount appropriated to the reserve fund in the current fiscal year."

PART II: MOBILE HOME LIENS

SECTION 2. G.S. 105-355 reads as rewritten:

"**§ 105-355. Creation of tax lien; date as of which lien attaches.**

(a) Lien on Real Property. – Regardless of the time at which liability for a tax for a given fiscal year may arise or the exact amount thereof be determined, the lien for taxes levied on a parcel of real property shall attach to the parcel taxed on the date as of which property is to be listed under G.S. 105-285, and the lien for taxes levied on personal property shall attach to all real property of the taxpayer in the taxing unit on the same date. All penalties, interest, and costs allowed by law shall be added to the amount of the lien and shall be regarded as attaching at the same time as the lien for the principal amount of the taxes. For purposes of this subsection (a):

(1) Taxes levied on real property listed in the name of a life tenant under G.S. 105-302 (c)(8) shall be a lien on the fee as well as the life estate.

(2) Taxes levied on improvements on or separate rights in real property owned by one other than the owner of the land, whether or not listed separately from the land under G.S. 105-302 (c)(11), shall be a lien on both the improvements or rights and on the land.

(b) Lien on Mobile Home Listed as Personal Property. – The lien for taxes levied on a mobile home listed as personal property shall attach to the mobile home and to all real property of the taxpayer in the taxing unit on the date as of which property is to be listed under G.S. 105-285.

~~(b)~~(c) Lien on Personal Property. – Taxes levied on real and personal property (including penalties, interest, and costs allowed by law) shall be a lien on personal property from and after levy or attachment and garnishment of the personal property levied upon or attached."

PART III: PRESENT-USE VALUE PROPERTY CHANGES

SECTION 3.1. 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 must be appraised under the use-value schedules as woodland or wasteland. A farm unit may consist of more than one tract of agricultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(1), and each tract must be under a sound management program. If the agricultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also, woodland is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent agricultural land, protect water quality of adjacent agricultural land, or serve as buffers for adjacent livestock or poultry operations.

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

(2) Forestland. – Land that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program. Forestland includes wasteland that is a part of the forest unit, but the wasteland included in the unit must be appraised under the use-value schedules as wasteland. A forest unit may consist of more than one tract of forestland, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(3), and each tract must be under a sound management program.

(3) Horticultural land. – Land that is a part of a horticultural unit that is actively engaged in the commercial production or growing of fruits or vegetables or nursery or floral products under a sound management program. Horticultural land includes woodland and wasteland that is a part of the horticultural unit, but the woodland and wasteland included in the unit must be appraised under the use-value schedules as woodland or wasteland. A horticultural unit may consist of more than one tract of horticultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(2), and each tract must be under a sound management program. If the horticultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also, woodland is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent horticultural land or protect water quality of adjacent horticultural land. Land used to grow horticultural and agricultural crops on a rotating basis or where the horticultural crop is set out or planted and harvested within one growing season, may be treated as agricultural land as described in subdivision (1) of this section when there is determined to be no significant difference in the cash rental rates for the land.

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

a. ~~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.~~An individual.

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 conditions listed in this sub-subdivision. For the purpose of this sub-subdivision, the terms "having as its principal business" and "actively engaged in the business of the entity" include the leasing of the land for one of the activities described in~~

~~subdivisions (1), (2), and (3) only if all members of the business entity are relatives.~~

~~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.~~that meets all of the following conditions:

1. Its principal business is farming agricultural land, horticultural land, or forestland.

2. All of its members are, directly or indirectly, individuals who are actively engaged in farming agricultural land, horticultural land, or forestland or a relative of one of the individuals who is actively engaged. An individual is indirectly a member of a business entity that owns the land if the individual is a member of a business entity or a beneficiary of a trust that is part of the ownership structure of the business entity that owns the land.

3. It is not a corporation whose shares are publicly traded and none of its members are corporations whose shares are publicly traded.

4. If it leases the land, all of its members are individuals and are relatives. Under this condition, 'principal business' and 'actively engaged' include leasing.

c. A trust that ~~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~~ all of the following conditions:

1. ~~Is the creator of the trust or the creator's relative.~~It was created by an individual who owned the land and transferred the land to the trust.

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.~~All of its beneficiaries are, directly or indirectly, individuals who are the creator of the trust or a relative of the creator. An individual is indirectly a beneficiary of a trust that owns the land if the individual is a beneficiary of another trust or a member of a business entity that has a beneficial interest in the trust that owns the land.

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

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

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

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

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

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

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

b. A lineal ancestor or a lineal descendant.

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

d. An aunt or an uncle.

e. A spouse of ~~a person~~an individual listed in paragraphs a. through d. For the purpose of this subdivision, an adoptive or adopted relative is a relative and the term "spouse" includes a surviving spouse.

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

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

SECTION 3.2. 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 must be appraised, assessed, and taxed as provided in G.S. 105-277.2 through G.S. 105-277.7.

(1) Agricultural land. – Individually owned agricultural land consisting of one or more tracts, one of which satisfies the requirements of this subdivision. For agricultural land used as a farm for aquatic species, as defined in G.S. 106-758, the tract must meet the income requirement for agricultural land and must consist of at least five acres in actual production or produce at least 20,000 pounds of aquatic species for commercial sale annually, regardless of acreage. For all other agricultural land, the tract must meet the income requirement for agricultural land and must consist of at least 10 acres that are in actual production. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.

To meet the income requirement, agricultural land must, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the land, any payments received under a governmental soil conservation or land retirement program, and the amount paid to the taxpayer during the taxable year pursuant to P.L. 108-357, Title VI, Fair and Equitable Tobacco Reform Act of 2004.

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

includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program.

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

(b) ~~Natural Person~~Individual 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,~~an individual must also satisfy one of the following conditions:

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

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

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

(b1) Entity Ownership Requirements. – In order to come within a classification described in subsection (a) of this section, ~~the~~ land ~~must, if~~ owned by a business entity or ~~trust,~~trust must 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~~ Exceptions to Ownership Requirements. – Notwithstanding the provisions of subsections (b) and (b1) of this section, land may qualify for classification in the hands of the new owner if all of the conditions listed in either subdivision of this subsection are met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land.

(1) ~~Exception for assumption of deferred liability.~~Continued use. – If the land qualifies for classification in the hands of the new owner under the provisions of this subdivision, then ~~the~~ any deferred taxes remain a lien on the land under G.S. 105-277.4(c), the new owner becomes liable for the deferred taxes, and the deferred taxes become payable if the land fails to meet any other condition or requirement for classification. Land qualifies for classification in the hands of the new owner if all of the following conditions are met:

a. The land was appraised at its present use value at the time title to the land passed to the new owner.

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

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

(2) ~~Exception for expansion~~Expansion of existing unit. – ~~If deferred liability is not assumed under subdivision (1) of this subsection, the land~~Land qualifies for classification in the hands of the new owner if, at the time title passed to the new owner, the land was not appraised at its present-use value but was being used for the same purpose and was eligible for appraisal at its present-use value as other land already owned by the new owner and classified under subsection (a) of this section. The new owner must timely file an application as required by G.S. 105-277.4(a)."

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

(d) Exception for Conservation Reserve Program. – Land enrolled in the federal Conservation Reserve Program authorized by 16 U.S.C. Chapter 58 is considered to be in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum gross income requirements of this section either separately or in combination with income from actual production. Land enrolled in the federal Conservation Reserve Program must be assessed as agricultural land if it is planted in vegetation other than trees, or as forestland if it is planted in trees.

(d1) Exception for Easements on Qualified Conservation Lands Previously Appraised at Use Value. – Property that is appraised at its present-use value under G.S. 105-277.4(b) shall continue to qualify for appraisal, assessment, and taxation as provided in G.S. 105-277.2 through G.S. 105-277.7 as long as the property is subject to an enforceable conservation easement that would qualify for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12, without regard to actual production or income requirements of this section. Notwithstanding G.S. 105-277.3(b) and (b1), subsequent transfer of the property does not extinguish its present-use value eligibility as long as the property remains subject to an enforceable conservation easement that qualifies for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12. The exception provided in this subsection applies only to that part of the property that is subject to the easement.

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

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

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

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

(f) Sound Management Program for Agricultural Land and Horticultural Land. – If the property owner demonstrates any one of the following factors with respect to agricultural land or horticultural land, then the land is operated under a sound management program:

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

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

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

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

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

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

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

(g) Sound Management Program for Forestland. – If the owner of forestland demonstrates that the forestland complies with a written sound forest management plan for the production and sale of forest products, then the forestland is operated under a sound management program."

PART IV: EFFECTIVE DATES

SECTION 4. Part I of this act is effective July 1, 2011; sections 1.2-1.4 apply to taxes imposed for taxable years beginning on or after that date. Part II of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2009. Part III of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2008. Notwithstanding G.S. 105-277.4(a), an application submitted for the 2008-2009 tax year under G.S. 105-277.4 for the classification of land owned by a business entity or a trust is considered timely if it is filed on or before September 1, 2008. The remainder of this act is effective when it becomes law.

BILL ANALYSIS

BILL DRAFT 2007-LAxz-20: Property Tax Modifications

Committee:	Revenue Laws Study Committee	**Date:**	May 6, 2008
Introduced by:		**Summary by:**	Dan Ettefagh Martha Walston Committee Counsel
Version:	2007-LAxz-20		

SUMMARY: This legislative proposal would make the following changes to the property tax laws:

- ***Part I would change the current, staggered octennial schedule for general reappraisals to a staggered quadrennial schedule and would eliminate horizontal adjustments.***
- ***Part II would treat mobile home liens the same as tax liens on other homes***
- ***Part III would modify the present-use value ownership requirements to reflect modern estate planning and would allow property to remain in present-use value when deferred taxes are paid at the time of transfer and the new owner continues to farm the land and files an application for present-use value status.***

BILL ANALYSIS:

<u>General Reappraisals of Real Property</u>

Under current law, counties are required to reappraise real property at least once ever eight years in a staggered cycle. The law provides for advancing the octennial schedule so as to allow counties to adopt a shorter cycle of, e.g., four or six years. Counties are also permitted the option of horizontal adjustments in the fourth year of the cycle, in which the county reviews the appraised values of real property and compares it to the current true value to determine whether an adjustment is needed.

Section 1.3 of Part I of the proposal would require counties to reappraise real property at least every four years in a staggered system. This new quadrennial system would be the default cycle; however, counties would retain their current option of advancing the schedule so as to allow adoption of a shorter cycle. Horizontal adjustments, by way of contrast, would be eliminated under Section 1.4 of the proposal, based on the practical consideration that it is not utilized by the counties. The initial schedule of quadrennial revaluations would begin in 2011, and placement of the counties in the initial schedule was a product of a study conducted by the Department of Revenue to determine (i) what year would best accommodate each county's currently projected cycle and next general reappraisal and (ii) how to, as far as practicable, split the 100 counties into four equal groups. The delayed implementation of the initial schedule would, additionally, allow counties to request any needed or desired modifications.

The remainder of Part I would accomplish the following conforming changes:

- The requirement, that the assessor annually review at least one-eighth of the parcels in the county exempted or excluded from taxation or classified for present-use value to verify eligibility, would be increased to one-fourth of the parcels to maintain a schedule that allowed all parcels exempted or excluded to have eligibility verified once in between general reappraisals (Sections 1.1, 1.5, and 1.6).
- Public service company system property is appraised by the Department yearly. Under current law, if the median ratio established in sales assessment ratio studies for real property

in a county is below ninety percent in the year the county conducts a reappraisal of real property or in the fifth or eighth year, an adjustment may be made. Since fifth and eighth years are not possible in a quadrennial system, the proposal would eliminate references to these years (Section 1.2).

- Under current law, a county must raise funds for the next general reappraisal in roughly equal, annual installments in the fiscal years between reappraisals. The proposal would not change this requirement, but it would change the statutory language from referencing, specifically, an octennial schedule to accommodate any cycle (i.e. the default quadrennial cycle or a shorter cycle, should a county adopt one) (Section 1.7).

Lien on Mobile Home Classified as Personal Property

Under current law, a mobile home may be listed as real property or personal property for property tax purposes. If property taxes are not paid on the mobile home, the tax collector may go against the taxpayer by garnishing wages, attaching bank accounts, and using debt setoff. The tax collector may also levy on the home by taking possession and selling the home if the delinquent taxpayer owns the home. When the mobile home is listed as real property, then the unpaid taxes are a lien on the mobile home and a subsequent purchaser of the mobile home is also liable for the unpaid taxes. Counties have encountered problems when there is nonpayment of property taxes on mobile homes listed as personal property. Often the mobile home has been repossessed and sold on site or the mobile home is sold and moved without a permit issued by the tax collector as required by G.S. 105-316.1. The tax collector may not be aware of the sale until after it is completed and the former owner has disappeared. Once the mobile home is transferred to a new owner for value, the county's ability to collect taxes due by levy and sale expires. The county tax collector has no recourse against the present owner. The tax collector could garnish the former owner's wages, but often the whereabouts of the former owner are unknown.

Part II of the proposal would remedy the above problem by providing that a tax lien attaches to a mobile home listed as personal property and to all real property of the taxpayer in the taxing unit on the date the mobile home is listed. Once the lien has attached, its priority is not affected by transfer of title, by death, or by receivership of the property owner. In effect, the delinquent taxes follow the mobile home regardless of whether it is listed as real property or personal property, and a subsequent buyer is liable for the unpaid taxes. This proposed language was part of Senate Bill 1309 that passed the Senate during the 2007 Session.

Present-Use Value Ownership Modifications

Since 1973, the General Assembly has provided special property tax treatment for farmland that is classified and used for agricultural, horticultural, or forest purposes.[1] If the farmland meets certain ownership and size requirements and is engaged in commercial production under a sound management program, the land may be appraised and taxed at its present-use value (PUV) as opposed to market value.[2] PUV is usually much less than market value. The difference between the taxes due on the PUV and taxes that would have been payable in the absence of the special tax treatment is known as deferred taxes. When the land becomes disqualified for PUV, the deferred taxes for the current year and the three previous years with interest will usually become due and payable.[3]

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[1] During the 2007 Session, the agricultural land classification was amended to include agricultural land used as an aquatic specifies farm, effective in the 2008-2009 tax year.

[2] Agricultural and horticultural land must also meet an income requirement: the land must have one tract that produces at least $1,000 average gross income over the three preceding years.

[3] No deferred taxes are due if the property loses its classification for one of the following purposes: (1) the land is enrolled in the federal Conservation Reserve Program and is no longer in production and therefore does not meet the income requirement, (2) the land is conveyed by gift to certain exempt organizations and governmental entities. This applies to conveyances by gift to nonprofit organizations where the property will qualify for exclusion from the tax base because it is real property that will be exclusively used for educational and scientific purposes as a protected natural area, or where the

One of the most complex parts of the PUV program is determining the ownership requirements in order to qualify for the program, particularly when the property is owned by a business entity or trust. The law requires that PUV property be "individually owned". Any of the following categories satisfy this definition:

- Natural person.
- Business entity – This term applies to limited liability companies, general partnerships, limited partnerships, and corporations. To satisfy the definition of "business entity", the entity must have agriculture, horticulture, or forestry as its principal business; all members of the entity must be natural persons; and all members of the business entity must be actively engaged in the principal business of the entity or be related to a member who is actively engaged in the principal business of the entity. Alternately, a member can be a relative of a decedent who met one or both of the above two conditions after the business entity had already qualified for PUV classification and from whom the member inherited his interest.
- Tenancy in common – This is a form of ownership where multiple owners (natural persons or business entities) can own individual interests in property.
- Trusts – The trust must be created by a natural person who transferred the land to the trust. Each beneficiary who is entitled to receive income or principal must be one of the following:
  (a) The creator of the trust or a relative of the creator of the trust.
  (b) A second trust whose beneficiaries (currently entitled to receive income or principal) are all either the creator of the trust or a relative of the creator of the trust.
- Testamentary trust – The trust must satisfy all of the following requirements:
  (a) Must be created by a natural person who transferred the land to the trust.
  (b) Land must have qualified for classification in the hands of the natural person prior to transfer to the trust.
  (c) At the time of the creator's death, the creator had no relatives.
  (d) Trust income, less reasonable administrative expenses, is used exclusively for educational, scientific, literary, cultural, charitable, or religious purposes.

<u>Ownership Modifications</u>
In recent years, taxpayers have voiced concerns about the complexities and perceived unfairness of certain aspects of the ownership requirements for qualified farmland. In addition, county tax assessors, who must apply the PUV laws, have echoed concerns about the complexity of these requirements. Staff met with representatives of county tax assessors, the North Carolina Association of County Commissioners, the School of Government, the North Carolina Farm Bureau, and the Department of Revenue to discuss these issues. This working group proposed the following changes to PUV ownership set out in Part III of the proposal:

- Change the definition of "individually owned" as follows:
  (a) The awkward reference to ""owned by a natural person" is changed to "owned by an individual".

  (b) Members of a business entity are no longer restricted to individuals and will include trusts and other business entities. A qualified business entity, however, may not be a corporation whose shares are publicly traded and none of its members may be corporations whose shares are publicly traded. When the membership of a business entity includes a business entity or a trust, then all members of the business entity and all beneficiaries of the trust must be individuals. These individuals are deemed to be indirect members of the qualified business

property will be exclusively used for nonprofit historic preservation purposes, or (3) the property is conveyed by gift to the State, political subdivisions of the State, or the United States.

entity.[4] As in current law, the principal business of the business entity must be in agriculture, horticulture, or forestry, and each member must be actively engaged in one of these activities or related to a member who is actively engaged in one of these activities. Also if the land is leased, all members of the business entity must be individuals and relatives.

(c) Beneficiaries of a trust may be a business entity as long as the members of the business entity are individuals who either created the trust or who are relatives of the creator. These individuals are deemed to be indirect beneficiaries.

(d) A tenant in common may include a trust in addition to an individual and business entity.

The following are examples of land that would qualify for PUV under the proposed changes:

- A corporation applies for PUV. Four shareholders of the corporation are individuals who are actively engaged in farming the land and one shareholder is an LLC. The members of the LLC are all relatives of one of the individual shareholders. (Under current law, the corporation would not qualify because it has an LLC as a member.)
- Tenancy in common applies for PUV, and one of the tenants is a trust. (Under current law, the property would not qualify, because all tenants must be individuals or business entities.)
- An LLC applies for PUV, and one of the members of the LLC is a trust. All beneficiaries of the trust are children of the individual members of the LLC that owns the land. (Under current law, the LLC would not qualify because the trust is not an individual.)

Deferred Taxes Paid at Transfer

The property tax working group also proposed clarifying language that will allow land to remain in the PUV system if land currently in PUV is transferred to a new owner, but the deferred taxes are paid at the time the transfer occurs.

Under current law, there are several standard ownership requirements that a natural person or business entity must meet in order for their property to be in the PUV system:

- If the property is owned by a natural person, the property must meet one of the following requirements:
  1. The property is the owner's place of residence.
  2. The property has been owned by the current owner or a relative of the current owner for the four full years preceding January 1 of the year for which application is made.
  3. If transferring from a business entity or trust to the current owner, the property must have been qualified for and receiving PUV.
- If the property is owned by a business entity, the property must have been owned by the business entity or by one or more members of the business entity for the four full years preceding January 1 for which application is made.

An exception to these standard ownership requirements exists when land appraised at its PUV value is transferred to a new owner and the new owner (i) continues to use the land for its current PUV classification, (ii) files an application for PUV, and (iii) assumes the deferred taxes. However, this exception has been interpreted not to apply when the seller pays more than the current year's taxes at the time of transfer. The seller is deemed to have voluntarily removed the property from the PUV program, and the new owner may have to wait four years to qualify for PUV. Part III of the proposal would allow

[4] The indirect ownership determination does not stop at the first tier of the business entity that owns farmland. For example, if a business entity has as one of its members an LLC and one of the members of the LLC is another LLC, then the indirect ownership will apply to any member of the second LLC if the member is an individual who is actively engaged in farming the land or a relative of an individual who is actively engaged in farming the land.

the land to remain in PUV when the deferred taxes are paid at the time of transfer. The new owner will become liable for subsequent deferred taxes when the land becomes disqualified.

EFFECTIVE DATE: Part I of the proposal is effective July 1, 2011, with the substantive changes converting the octennial schedule to a quadrennial schedule and eliminating the horizontal adjustment provisions applying to taxes imposed for taxable years beginning on or after that date. Part II of the proposal is effective for taxes imposed for taxable years beginning on or after July 1, 2009. Part III of the proposal is effective for taxes imposed for taxable years beginning on or after July 1, 2008. Notwithstanding G.S. 105-277.4(a), an application submitted for the 2008-2009 tax year for the classification of land owned by a business entity or trust is considered timely if it is filed on or before September 1, 2008.

This summary quotes extensively from the "Present-Use Value Program" prepared by the Property Tax Division of the North Carolina Department of Revenue.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

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 6, 2008

TO: Revenue Laws Study Committee

FROM: Rodney Bizzell
Fiscal Research Division

RE: 2007-LAxz-20

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
REVENUES:					
General Fund	***No General Fund Impact***				
Local Governments	***$2.5 - $5 million annual gain from mobile home lien changes***				
EXPENDITURES:					
Local Governments	***Some local governments will experience increased costs associated with a more frequent revaluation process. The amount per county will differ and the total cost is not known.***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Local Governments; NC Department of Revenue

EFFECTIVE DATE: Part I (Quadrennial Revaluation) is effective July 1, 2011; Part II (mobile home liens) is effective for taxes imposed for taxable years beginning on or after July 1, 2009; Part III (PUV Changes) is effective for taxable years beginning on or after July 1, 2008.

BILL SUMMARY:
This legislative proposal would change the current, staggered octennial schedule for general reappraisals to a staggered quadrennial schedule, would eliminate horizontal readjustments, would treat mobile home liens the same as tax liens on other homes, would modify the present-use value ownership requirements to reflect common forms of land ownership for estate planning purposes, and would allow property to remain in present-use value when deferred taxes are paid at the time of transfer and new owner continues to farm the land and files an application for present-use value status.

ASSUMPTIONS AND METHODOLOGY:
Quadrennial Revaluation Schedule
Under current law, counties are required to reappraise real property at least once ever eight years in a staggered cycle. The law provides for advancing the octennial schedule so as to allow counties to adopt a shorter cycle of, e.g., four or six years. Counties are also permitted the option of horizontal adjustments in the fourth year of the cycle, in which the county reviews the appraised values of real property and compares it to the current true value to determine whether an adjustment is needed.

This bill would require counties to reappraise real property at least every four years in a staggered system. This new quadrennial system would be the default cycle; however, counties would retain their current option of advancing the schedule so as to allow adoption of a shorter cycle. Horizontal adjustments, by way of contrast, would be eliminated under Section 1.4 of the proposal, based on the practical consideration that it is not utilized by the counties. The initial schedule of quadrennial revaluations would begin in 2011, and placement of the counties in the initial schedule was a product of a study conducted by the Department to determine (i) what year would best accommodate each county's currently projected cycle and next general reappraisal and (ii) how to, as far as practicable, split the 100 counties into four equal groups.

The revaluation process allows counties to levy the property tax on property values that more closely reflect current market values. The process does not have any revenue impact to the extent that local governments convert to a revenue neutral tax rate following the revaluation.

Under current law, anyone other than a manufacturer, retailer, or licensed carrier of mobile homes, must obtain a permit from the county tax collector before moving a mobile home.

Mobile Home Liens
Under current law, anyone other than a manufacturer, retailer, or licensed carrier of mobile homes, must obtain a permit from the county tax collector before moving a mobile home.

If a holder of a lien is repossessing a mobile home, the lienholder must apply for the permit and inform the tax collector of the location to which the home is to be taken. If the lienholder is a North Carolina resident, the taxes must be paid within seven days of issuance of the permit. Nonresident lienholders must pay the taxes at the time of application for a permit.

Counties have encountered frequent situations where a mobile home has been repossessed and sold on site or where the mobile home is sold and moved without a permit issued by the county tax collector. Often tax collectors are not aware of the sales until after they are completed and the former owner has disappeared. Once the mobile home is transferred to a new owner for value, the county's ability to collect taxes due by levy and sale expires. The county tax collector has no recourse against the present owner if the mobile home is listed as personal property. The county could garnish the former owner's wages, but usually the whereabouts of the former owner are unknown.

This bill would remedy the above problem by providing that a tax lien attaches to a mobile home listed as personal property and to all real property of the taxpayer in the taxing unit on the date the mobile home is listed (January 1). Once the lien has attached, its priority is not affected by transfer of title, by death, or by receivership of the property owner. In other words, the delinquent taxes follow the mobile home, and a subsequent buyer is liable for the unpaid taxes.

According to the NC Tax Collectors Association, the current tax collection rate for manufactured homes is approximately 85% and the improving the rate to 96% would generate approximately $2.5 million in additional revenue. The total revenue gain would be higher because this figure does not include municipalities.

PUV Changes

The General Assembly provides special tax treatment for farmland if the property is used for agricultural, horticultural or forestry purposes. If the farmland meets certain ownership and size requirements and is engaged in commercial production under a sound management plan, the land may be appraised and taxed at its present-use value (PUV), rather than market value. When the land becomes disqualified from PUV, the deferred taxes for the current year and the previous three years become due.

The bill makes several changes to simplify the PUV ownership requirements. Currently, PUV land must be individually owned. This requirement can be satisfied by the following categories: natural persons, business entities, tenancy in common and trusts. To satisfy the definition of business entity, the entity must be composed of natural persons, and the members must be actively engaged in the business or be related to a member who is actively engaged in the business.

The current ownership requirements do not allow for a business entity, such as an LLC, to qualify if one of the members of the business is a trust. For example, if an LLC applies for PUV, and one of the members of the LLC is a trust, the property would not satisfy the ownership requirements because all of the members are not "natural persons," even though the members of the trust may be children of the members of the LLC.

The bill simplifies the ownership requirements by eliminating the requirement that all members of the business entity be natural persons. The definition of "individually owned is changed to include "farms groups," directly or indirectly by individuals in the group. An indirect owner may be the beneficiary of a trust or a business entity. The definition of business entity specifically excludes publicly-traded corporations and clarifies that the business entity must have as its principal business one of the following: agriculture, horticulture, or forestry.

The proposed changes allow the tax assessor to consider the make-up of individual ownership without excluding beneficiaries of a trust who would otherwise be eligible. The changes are not expected to have any significant fiscal impact.

Payment of Deferred Taxes

The bill also allows land to remain in the PUV system if it is transferred to a new owner and the deferred taxes are paid at the time of the transfer. Current law requires the new owner to assume the deferred taxes. This section of the bill is also not expected to have any significant impact.

SOURCES OF DATA: NC Department of Revenue; NC Tax Collectors Association

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #7

EXEMPT DISASTER ASSISTANCE DEBIT SALES

LEGISLATIVE PROPOSAL #7

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO PROVIDE A SALES TAX EXEMPTION FOR TANGIBLE PERSONAL PROPERTY PURCHASED WITH A CLIENT ASSISTANCE DEBIT CARD ISSUED FOR DISASTER ASSISTANCE RELIEF BY A STATE AGENCY OR A FEDERAL AGENCY OR INSTRUMENTALITY.

SHORT TITLE: Exempt Disaster Assistance Debit Sales.

SPONSORS:

BRIEF OVERVIEW: The proposal would exempt from sales tax tangible personal property purchased with a client assistance debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality. The American Red Cross is an instrumentality of a federal agency.

FISCAL IMPACT: The fiscal impact of exempting client assistance debit cards from state and local sales and use taxes is based on data provided by the Triangle ARC. During the 2006-07 fiscal year, North Carolina American Red Cross chapters provided an estimated $3.9 million dollars in disaster relief assistance with approximately 70 percent of the $3.9 million ($2.8 million) in the form of client assistance cards.

Based on Moody's Economy.com inflation rates, Fiscal Research estimates that ARC will provide roughly three million dollars in disaster relief via debit cards in FY2008-09. Should client assistance cards receive a tax exemption, state and local sales tax revenues would decline by approximately $196,000 during this same period.

EFFECTIVE DATE: The bill would become effective July 1, 2008, and apply to purchases made on or after that date.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

U **D**

BILL DRAFT 2007-RBz-32 [v.4] (03/25)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/27/2008 8:59:52 AM

Short Title: Exempt Disaster Assistance Debit Sales. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A SALES TAX EXEMPTION FOR TANGIBLE PERSONAL PROPERTY PURCHASED WITH A CLIENT ASSISTANCE DEBIT CARD ISSUED FOR DISASTER ASSISTANCE RELIEF BY A STATE AGENCY OR A FEDERAL AGENCY OR INSTRUMENTALITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(58) Tangible personal property purchased with a client assistance debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality."

SECTION 2. This act becomes effective July 1, 2008, and applies to purchases made on or after that date.

BILL DRAFT 2007-RBz-32:
Exempt Disaster Assistance Debit Sales

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 2, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would exempt from sales tax tangible personal property purchased with a client assistance debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality. The American Red Cross is an instrumentality of a federal agency. The bill would become effective July 1, 2008, and apply to purchases made on or after that date.

CURRENT LAW: The State may not impose its sales tax on purchases made by the federal government or an instrumentality of the federal government. G.S. 105-164.13(17) specifically exempts 'sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State.' The American Red Cross (ARC) is an instrumentality of a federal agency. Therefore, sales made pursuant to a disbursing order issued by the ARC are considered a sale to the ARC that is exempt from taxation.

In the past, the ARC provided disaster assistance relief by giving disaster victims a disbursing order to purchase items that the victim needed. Over the last few years, the ARC has begun giving disaster victims debit cards to use to purchase these same items. The ARC began using debit cards because it believes they are more efficient, effective, and less bureaucratic for the victim and less administrative effort and expense for the organization. However, for purposes of the sales tax exemption, there is a significant difference between a debit card and a disbursing order: the purchaser, for purposes of the sales tax exemption, is the disaster victim when a debit card is used and it is the ARC when the disbursing order is used. Therefore, purchases made with a disaster assistance debit card are subject to sales tax.

BILL ANALYSIS: This bill draft would exempt from sales tax tangible personal property purchased with a client assistant debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality. The ARC is an instrumentality of a federal agency. Another example of a federal agency or instrumentality that may utilize this exemption would be FEMA.

This bill draft would extend the sales tax exemption that exists for purchases made through a disbursing order issued by a State or federal agency or instrumentality to purchases made with a client assistance debit card issued by it. It is my understanding that in 2007, the total disaster victim assistance purchases were $3 million across all North Carolina chapters of the ARC.

BACKGROUND: The ARC client assistance card clearly identifies itself as one issued by the ARC. The ARC has the ability to see from its reports of the card's use the amount purchased and the store from which the goods were purchased. Unlike the old disbursing order system, the ARC does not have a cash register receipt describing the specific items purchased. The client assistance card authorization form is a contract between the ARC and the disaster victim. The contract stipulates the types of items the card may be used to purchase. In the event of inappropriate purchases, the card can be suspended.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

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, 2008

TO: Revenue Laws

FROM: Sandra Johnson
Fiscal Research Division

RE: 2007-RBz-32

FISCAL IMPACT

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

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
REVENUES:					
General Fund Impact	(129,000)	(139,000)	(136,000)	(139,000)	(142,000)
Local Impact	(67,000)	(61,000)	(68,000)	(69,000)	(71,000)
EXPENDITURES:					
POSITIONS (cumulative):	-	-	-	-	-

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

EFFECTIVE DATE: July 1, 2008

BILL SUMMARY: This bill draft would exempt from sales tax tangible personal property purchased with a client assistance card (debit card) issued for disaster assistance relief by a State agency or a federal agency or instrumentality. The American Red Cross is an instrumentality of a federal agency. The bill would become effective July 1, 2008, and apply to purchases made on or after that date.

CURRENT LAW: The State may not impose its sales tax on purchases made by the federal government or an instrumentality of the federal government. G.S. 105-164.13(17) specifically exempts sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State. The American Red Cross (ARC) is an instrumentality of a federal agency. Therefore, sales made pursuant to a disbursing order issued by the ARC are considered a sale to the ARC and is exempt from taxation.

In the past, the ARC provided disaster assistance relief by giving disaster victims a disbursing order reimbursement form to purchase items, but in recent years began giving disaster victims client assistance cards to make these purchases. Debit cards prove more efficient, effective, and less bureaucratic for the victim and require less administrative effort and expense from ARC. However, for purposes of the sales tax exemption, there is a significant difference between a debit card and a disbursing order. The purchaser, for purposes of the sales tax exemption, is the disaster victim when a debit card is used. The ARC is the purchaser when the disbursing order is used. Therefore, purchases made with a disaster assistance debit card are subject to sales tax.

ASSUMPTIONS AND METHODOLOGY:

The fiscal impact of exempting client assistance debit cards from state and local sales and use taxes is based on data provided by the Triangle ARC. During the 2006-07 fiscal year, North Carolina American Red Cross chapters provided an estimated $3.9 million dollars in disaster relief assistance with approximately 70 percent of the $3.9 million ($2.8 million) in the form of client assistance cards.

Based on Moody’s Economy.com inflation rates, Fiscal Research estimates that ARC will provide roughly three million dollars in disaster relief assistance via debit cards in FY2008-09. Should client assistance cards receive a tax exemption, state and local sales tax revenues would decline by approximately $196,000 during this same period (Table1).

Table 1 provides information on the projected sales tax revenue forgone by exempting disaster relief assistance debit cards from state and local sales and use taxes. The table also accounts for state and local sales and use tax changes occurring in October 2008 and October 2009.

Table 1: Revenue Impact of Exempting Disaster Relief Client Assistance Card Disbursements from Sales Tax, by Fiscal Year (in thousands)					
	***FY 2008-09**	****FY 2009-10**	**FY 2010-11**	**FY 2011-12**	**FY 2012-13**
State and Local Impact (6.75% sales tax)	(196,000)	(200,000)	(204,000)	(208,000)	(213,000)
General Fund Impact	(129,000)	(139,000)	(136,000)	(139,000)	(142,000)
Local Impact	(67,000)	(61,000)	(68,000)	(69,000)	(71,000)
* FY2008-09 estimates incorporate local and state sales tax rate changes occurring on October 1, 2008; Assumes local sales tax rate of 2.5% for three months and 2.25% for nine months; Also assumes state sales tax rate of 4.25% for three months and 4.5% for nine months					
* *FY2009-10 estimates incorporate local and state sales tax rate changes occurring on October 1, 2009; Assumes local sales tax rate of 2.25% for three months and 2% for nine months; Also assumes state sales tax rate of 4.5% for three months and 4.75% for nine months					
Source: Triangle American Red Cross Documentation of FY07 Financial & Material Assistance					

SOURCES OF DATA:

Triangle American Red Cross, Moody's Economy.com

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #8

REVENUE LAWS TECHNICAL, CLARIFYING, & ADMINISTRATIVE CHANGES

LEGISLATIVE PROPOSAL #8

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE TAX AND RELATED LAWS.

SHORT TITLE: Revenue Laws Technical, Clarifying, & Admin Changes.

SPONSORS:

BRIEF OVERVIEW: The proposal makes several technical, clarifying, and administrative changes to the revenue laws and related statutes.

FISCAL IMPACT:

EFFECTIVE DATE: Bill sections 20-62 are effective January 1, 2009. Except as otherwise provided, the remainder of this act is effective when it becomes law.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

U **D**

BILL DRAFT 2007-SVz-23 [v.11] (04/28)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/6/2008 4:44:46 PM

Short Title: Rev Laws Tech., Clarifying, & Admin Changes. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE TAX AND RELATED LAWS.

The General Assembly of North Carolina enacts:

911 TECHNICAL CHANGES

SECTION 1.(a) G.S. 62A-44 is amended by adding a new subsection to read:

"(b1) Adjustment. – If the revenues allocated to PSAPs under subdivision (b)(2) of this section are insufficient to fund the distribution under G.S. 62A-46(a)(1), then the Board may, once each fiscal year, adjust the allocation of revenues, provided that after the adjustment:

(1) The amount allocated to PSAPs is equal to the amount required to fund the distribution under G.S. 62A-46(a)(1).

(2) The amount allocated to CMRS providers is sufficient to make reimbursements under G.S. 62A-45."

SECTION 1.(b) G.S. 62A-46(b) reads as rewritten:

"(b) Percentage Designations. – The 911 Board must determine how revenue that is allocated to the 911 Fund for distribution to primary PSAPs and is not needed to make the base amount distribution required by subdivision (a)(1) of this section is to be used. The 911 Board must designate a percentage of the remaining funds to be distributed to primary PSAPs on a per capita basis and a percentage to be allocated to the PSAP Grant Account established in G.S. 62A-47. If the 911 Board does not designate an amount to be allocated to the PSAP Grant Account, the 911 Board must distribute all of the remaining funds on a per capita basis. The 911 Board may not change the percentage designation more than once each ~~calendar~~ fiscal year."

SECTION 1.(c) G.S. 62A-46 is amended by adding a new subsection to read:

"(f) The Eastern Band of the Cherokee. – Notwithstanding GS 62A-46(e), the Eastern Band of the Cherokee is eligible for distributions from the 911 Fund. The 911 Board shall determine the base amount to be distributed to the Eastern Band of the Cherokee upon receipt of satisfactory evidence of the amount of 911 funds the PSAP received in the fiscal year ending June 30, 2007."

WORK OPPORTUNITY TAX CREDIT CHANGES

SECTION 2.(a) G.S. 105-129.16G reads as rewritten:

"**§ 105-129.16G. Work Opportunity Tax Credit.**

(a) Credit. – A taxpayer who is allowed a federal tax credit under Part IV, Subpart F of the Code for the taxable year is allowed a credit against the tax imposed by this Part. The credit is equal to six percent (6%) of the amount of credit allowed under the ~~Code.~~Code for wages paid during the taxable year for positions located in this State. A position is located in this State if more than fifty percent (50%) of the employee's duties are performed in the State.

(b) Sunset. – This section expires for taxable years beginning on or after January 1, 2012."

SECTION 2.(b) G.S. 105-130.5(b)(11) reads as rewritten:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

…

(11) If a deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code because the corporation claimed a federal tax credit against its federal income tax liability for the income year in lieu of a deduction, the amount by which the deduction was reduced and the amount of the deduction that was disallowed. This deduction is allowed only to the extent that a similar credit is not allowed by this Chapter for the amount."

SECTION 2.(c) G.S. 105-134.6(d)(2) reads as rewritten:

"(2) The taxpayer may deduct the amount by which the taxpayer's deductions allowed under the Code were reduced, and the amount of the taxpayer's deductions that were not allowed, because the taxpayer elected a federal tax credit in lieu of a deduction. This deduction is allowed only to the extent that a similar credit is not allowed by this ~~Part~~ Chapter for the amount."

SECTION 2.(d) Subsection (a) of this section is effective for taxable years beginning on or after July 1, 2008.

REFORM TAX APPEALS CHANGES

SECTION 3.(a) Section 10 of S.L. 2007-491 is repealed.

SECTION 3.(b) G.S. 105-122(a) reads as rewritten:

"(a) An annual franchise or privilege tax is imposed on a corporation doing business in this State. The tax is determined on the basis of the books and records of the corporation as of the close of its income year. A corporation subject to the tax must file a return under affirmation with the Secretary at the place and in the manner prescribed by the Secretary. The return must be signed by the president, vice-president, treasurer, or chief financial officer of the corporation. The return is due on or before the fifteenth day of the fourth month following the end of the corporation's income year. ~~Every corporation, domestic and foreign, incorporated, or, by an act, domesticated under the laws of this State or doing business in this State, except as otherwise provided in this Article, shall, on or before the fifteenth day of the third month following the end of its income year, annually make and deliver to the Secretary in the form prescribed by the Secretary a full, accurate, and complete report and statement signed by either its president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary, containing the facts and information required by the Secretary as shown by the books and records of the corporation at the close of the income year.~~

~~There shall be annexed to the return required by this subsection the affirmation of the officer signing the return.~~"

SECTION 3.(c) Subsections (a) and (c) of this section are effective January 1, 2008. Subsection (b) of this section is effective for taxable years beginning on or after January 1, 2009.

SECTION 4.(a) G.S. 105-130.16(a) reads as rewritten:

"(a) Return. – Every corporation doing business in this State must file with the Secretary an income tax return showing specifically the items of gross income and the deductions allowed by this Part and any other facts the Secretary requires to make any computation required by this Part. The return of a corporation must be signed by its president, vice-president, treasurer, ~~assistant treasurer, secretary, or assistant secretary.~~ or chief financial officer. The officer signing the return must furnish an affirmation verifying the return. The affirmation must be in the form required by the Secretary."

SECTION 4.(b) This section is effective for taxable years beginning on or after January 1, 2009.

SECTION 5.(a) G.S. 105-241.11(a) reads as rewritten:

"(a) Procedure. – A taxpayer who objects to a proposed denial of a refund or a proposed assessment of tax may request a Departmental review of the proposed action by filing a request for review. The request must be filed with the Department ~~within 45 days after the following:~~as follows:

(1) ~~The~~ Within 45 days of the date the notice of the proposed denial of the refund or proposed assessment was mailed to the taxpayer, if the notice was delivered by mail.

(2) ~~The~~ Within 45 days of the date the notice of the proposed denial of the refund or proposed assessment was delivered to the taxpayer, if the notice was delivered in person.

(3) ~~The date that~~ At any time between the date that inaction by the Department on a request for refund ~~was~~ is considered a proposed denial of the ~~refund.~~refund and the date the time periods set in the other subdivisions of this subsection expire."

SECTION 5.(b) This section is effective for taxable years beginning on or after January 1, 2008.

SECTION 6.(a) G.S. 105-241.14(c) reads as rewritten:

"(c) Time Limit. – The process set out in G.S. 105-241.13 for reviewing and attempting to resolve a proposed denial of a refund or a proposed assessment must conclude, and a final determination must be issued within nine months after the date the taxpayer files a request for review. The Department and the taxpayer may extend this time limit by mutual agreement. Failure to issue a notice of final determination within the required time does not affect the validity of a proposed denial of a refund or proposed assessment."

SECTION 6.(b) This section is effective for taxable years beginning on or after January 1, 2008.

SECTION 7.(a) G.S. 105-241.22 reads as rewritten:

"**§ 105-241.22. Collection of tax.**

The Department may collect a tax in the following circumstances:

(1) When a taxpayer files a return showing ~~tax~~ an amount due with the return and does not pay the amount shown due.

…"

SECTION 7.(b) This section is effective for taxable years beginning on or after January 1, 2008.

SECTION 8. G.S. 105-449.52(b) reads as rewritten:

"(b) ~~Hearing.~~ Review. – The procedure set out in G.S. 105-449.119 for ~~protesting~~ reviewing a penalty imposed under Article 36C, Part 6, of this Chapter applies to a penalty imposed under this section."

SECTION 9. G.S. 150B-31.1(d) reads as rewritten:

"(d) ~~Law Enforcement~~ Reports. ~~– A report of a law enforcement agency is~~ The following agency reports are admissible without testimony from personnel of the ~~law enforcement agency.~~ agency:

(1) Law enforcement reports.

(2) Government agency lab reports used for the enforcement of motor fuel tax laws."

COLLECTION CHANGES

SECTION 10.(a) G.S. 105-253 is recodified as G.S. 105-242.2 and reads as rewritten:

"**§ 105-242.2. Personal liability when certain taxes not ~~remitted.~~ paid.**

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

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

(2) Responsible person. – Any of the following:

a. The president, treasurer, or chief financial officer of a corporation.

b. A manager of a limited liability company or a partnership.

c. An officer of a corporation, a member of a limited liability company, or a partner in a partnership who has a duty to deduct, account for, or pay taxes listed in subsection (b) of this section.

d. A partner who is liable for the debts and obligations of a partnership under G.S. 59-45 or G.S. 59-403.

~~Any officer, trustee, or receiver of any corporation or limited liability company required to file a report with the Secretary who has custody of funds of the corporation or company and who allows the funds to be paid out or distributed to the stockholders of the corporation or to the members of the company without having remitted to the Secretary any State taxes that are due is personally liable for the payment of the tax.~~

(b) Responsible Person. – Each responsible ~~officer~~ person in a business entity is personally and individually liable for all of the ~~following:~~taxes listed in this subsection. If a business entity does not pay a tax it owes after the tax becomes collectible under G.S. 105-241.22, the Secretary may enforce the responsible person's liability for the tax by sending the responsible person a notice of proposed assessment in accordance with G.S. 105-241.9. The taxes for which a responsible person may be held personally and individually liable are:

(1) All sales and use taxes collected by ~~a corporation or a limited liability company~~ the business entity upon its taxable transactions.

(2) All sales and use taxes due upon taxable transactions of ~~a corporation or a limited liability company~~ the business entity but upon which it failed to collect the tax, but only if the person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

(3) All taxes due from ~~a corporation or a limited liability company~~ the business entity pursuant to the provisions of Articles 36C and 36D of Subchapter V of this Chapter and all taxes payable under those Articles by it to a supplier for remittance to this State or another state.

(4) All income taxes required to be withheld from the wages of employees of ~~a corporation or a limited liability company.~~the business entity.

~~The liability of the responsible officer is satisfied upon timely remittance of the tax by the corporation or the limited liability company. If the tax remains unpaid after it is due and payable, the Secretary may proceed to enforce the responsible officer's liability for the tax by sending the responsible officer a notice of proposed assessment in accordance with G.S. 105-241.9. As used in this section, the term "responsible officer" means the president, treasurer, and chief financial officer of a corporation, the manager of a limited liability company, and any other officer of a corporation or member of a limited liability company who has a duty to deduct, account for, or pay taxes listed in this subsection. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency also apply to an assessment made under this section.~~

~~The period of limitations for assessing a responsible officer for unpaid taxes under this section expires one year after the expiration of the period of limitations for assessment against the corporation or limited liability company.~~

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15.

(d) Distributions. – An officer, partner, trustee, or receiver of a business entity required to file a report with the Secretary who has custody of funds of the entity and who allows the funds to be paid out or distributed to the owners of the entity without having remitted to the Secretary any State taxes that are due is personally liable for the payment of the tax. The Secretary may enforce an individual's liability under this subsection by sending the individual a notice of proposed assessment in accordance with G.S. 105-241.9.

(e) Statute of Limitations. – The period of limitations for assessing a responsible person for unpaid taxes under this section expires one year after the expiration of the period of limitations for assessing the business entity."

SECTION 10.(b) This section becomes effective July 1, 2008, and applies to taxes that become collectible on or after that date.

SALES TAX CHANGES

SECTION 11. G.S. 105-164.16 is amended by adding a new subsection to read:

"(e) Simultaneous State and Local Changes. – When State and local sales and use tax rates change on the same date because one increases and the other decreases but the combined general rate does not change, sales and use taxes payable on the gross receipts from the following periodic payments are reportable in accordance with the changed State and local rates:

(1) Lease or rental payments billed after the effective date of the changes.

(2) Installment sale payments received after the effective date of the changes by a taxpayer who reports the installment sale on a cash basis."

OCCUPANCY TAX CHANGES

SECTION 12.(a) Article 9 of Chapter 105 is amended by adding a new section to read:

"**§ 105-264.1. Secretary's interpretation applies to local taxes that are based on State taxes.**

An interpretation by the Secretary of a law administered by the Secretary applies to a local law administered by a unit of local government when the local law refers to the State law to determine the application of the local law. A person who is subject to the local law or the unit of local government that administers the local law may ask the Secretary for an interpretation of the State law that determines the application of the local law. An interpretation by the Secretary of a State law that determines the application of a local law provides the same protections against liability under the local law that it provides under the State law."

SECTION 12.(b) G.S. 153A-155(c) reads as rewritten:

"(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered, the operator may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the operator's business records kept in the ordinary course of business and collect tax on the allocated price of the taxable accommodation. ~~The~~

The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. ~~The~~

The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax."

SECTION 12.(c) G.S. 160A-215(c) reads as rewritten:

"(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered, the operator may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the operator's business records kept in the ordinary course of business and collect tax on the allocated price of the taxable accommodation. ~~The~~

The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. ~~The~~

The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax."

MEDICAID TECHNICAL CHANGES

SECTION 13.(a) G.S. 105-522, as enacted by Section 31.16.3(f) of S.L. 2007-323, reads as rewritten:

"**§ 105-522. City hold harmless for repealed local taxes.**

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

(1) Eligible municipality. – A municipality that was incorporated on or before October 1, 2008, and receives a distribution of sales and use taxes under G.S. 105-472.

(2) Hold harmless amount. – Fifty percent (50%) of the amount of sales and use tax revenue ~~distributed under Article 40 of this Chapter to the municipality for a month, other than revenue from the sale of food that is subject to local tax but is exempt from State tax under G.S. 105-164.13B.~~ allocated under G.S. 105-486 for distribution to a municipality.

(b) Requirement. – A county is required to hold the eligible municipalities in the county harmless from the repeal of the local sales and use taxes formerly imposed under this Article. The Secretary must add an eligible municipality's hold harmless amount to the amount ~~distributed to the~~ otherwise allocated to the municipality for distribution under this Subchapter. To obtain the revenue for the hold harmless distribution, the Secretary must reduce ~~each county's monthly allocation under G.S. 105-472(b)~~ the amount otherwise allocated to a county for distribution under Article 39 of this Subchapter or under Chapter 1096 of the 1967 Session Laws by the hold harmless amounts for the municipalities in that county."

SECTION 13.(b) Section 31.16.3(d) of S.L. 2007-323 is repealed.

SECTION 13.(c) Section 31.16.3(e) of S.L. 2007-323 is repealed.

SECTION 13.(d) Subsection (a) of this section becomes effective October 1, 2008, and applies to distributions for months beginning on or after that date. The remainder of this section is effective when it becomes law.

SECTION 14.(a) G.S. 105-523, as enacted by Section 31.16.3(f) of S.L. 2007-323, reads as rewritten:

"**§ 105-523. County hold harmless for repealed local taxes.**

(a) Intent. – It is the intent of the General Assembly that each county benefit by at least five hundred thousand dollars ($500,000) annually from the exchange of a portion of the local sales and use taxes for the State's agreement to assume the responsibility for the non-administrative costs of Medicaid.

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

(1) City hold harmless amount. – The hold harmless amount determined under G.S. 105-522 for the eligible municipalities in a county.

~~(1)~~(2) Hold harmless threshold. – The amount of a county's Medicaid service costs and Medicare Part D clawback payments assumed by the State under G.S. 108A-54 for the fiscal year, less five hundred thousand dollars ($500,000).

~~(2)~~(3) Repealed sales tax amount. – Fifty percent (50%) of the amount of sales and use tax revenue ~~distributed to a county under Article 40 of this Chapter, other than revenue from the sale of food that is subject to local tax but is exempt from State tax under G.S. 105-164.13B.~~ allocated under G.S. 105-486 for distribution to a county.

(c) Requirement. – If a county's repealed sales tax amount plus its city hold harmless amount for a fiscal year exceeds the county's hold harmless threshold for that fiscal year, the State is required to hold the county harmless for the difference by paying the amount of the difference to the county. The Secretary must withhold from sales and use tax collections under Article 5 of this Chapter the amount needed to make the county hold harmless payments required by this section.

(d) Method. – The Secretary must estimate a county's repealed sales tax ~~amount~~ amount, city hold harmless amount, and hold harmless threshold for a fiscal year to determine if the county is eligible for a hold harmless payment. The Secretary must send to an eligible county with the distribution made under G.S. 105-472 for March of that year an amount equal to ninety percent (90%) of its estimated hold harmless payment. At the end of each fiscal year, the Secretary must determine ~~the difference between a county's repealed sales tax amount and its~~ each county's hold harmless ~~threshold~~ payment for that year. The Secretary must send by August 15 the remainder of the county's hold harmless payment for the fiscal year that ended on June 30. The

Secretary of the Department of Human Resources must give the Secretary of Revenue the data needed to determine a county's hold harmless threshold."

SECTION 14.(b) Section 31.16.3(g) of S.L. 2007-323 is repealed.

SECTION 14.(c) Section 31.16.4(c) of S.L. 2007-323 is repealed.

SECTION 14.(d) Section 31.16.4(d) of S.L. 2007-323 is repealed.

SECTION 14.(e) Section 31.16.4(e) of S.L. 2007-323 is repealed.

SECTION 14.(f) Section 14.4 of S.L. 2007-345 is repealed.

SECTION 14.(g) G.S. 105-522(a)(2), as enacted by Section 31.16.3(f) of S.L. 2007-323 and amended by Section 6 of this act, reads as rewritten:

"(2) Hold harmless amount. – ~~Fifty percent (50%) of the~~The sum of the following amounts allocated for distribution to a municipality for a month:

a. The amount of sales and use tax revenue allocated under G.S. ~~105-486 for distribution to a municipality.~~ 105-486. This calculation determines the effect of repealing a one-half percent (½%) sales and use tax distributed on a per capita basis.

b. An amount determined by subtracting twenty-five percent (25%) of the amount of sales and use tax revenue allocated under G.S. 105-472 or Chapter 1096 of the 1967 Session Laws from fifty percent (50%) of the amount of sales and use tax revenue allocated under G.S. 105-486. This calculation determines the effect of distributing a one-quarter percent (.25%) tax on the basis of point of origin instead of on a per capita basis."

SECTION 14.(h) G.S. 105-523(b)(3), as enacted by Section 31.16.3(f) of S.L. 2007-323 and as amended by subsection (a) of this Section, reads as rewritten:

"(3) Repealed sales tax amount. ~~– Fifty percent (50%) of the~~ The sum of the following amounts allocated for distribution to a county for a month:

a. The amount of sales and use tax revenue allocated under G.S. ~~105-486 for distribution to a county.~~105-486. This calculation determines the effect of repealing a one-half percent (½%) sales and use tax distributed on a per capita basis.

b. An amount determined by subtracting twenty-five percent (25%) of the amount of sales and use tax revenue allocated under G.S. 105-472 or Chapter 1096 of the 1967 Session Laws from fifty percent (50%) of the amount of sales and use tax revenue allocated under G.S. 105-486. This calculation determines the effect of distributing a one-quarter percent (.25%) tax on the basis of point of origin instead of on a per capita basis."

SECTION 14.(i) For fiscal year 2008-2009, the hold harmless amount determined for a municipality under G.S. 105-522 and the repealed sales tax amount determined for a county under G.S. 105-523 is reduced by the amount distributed in October, November, and December of 2008 to the municipality or county on a per capita basis under repealed G.S. 105-520(b).

For fiscal year 2009-2010, the hold harmless amount determined for a municipality under G.S. 105-522 and the repealed sales tax amount determined for a county under G.S. 105-523 is reduced by the amount distributed in October, November, and December of 2009 to the municipality or county on the basis of point of origin under repealed G.S. 105-520(a).

SECTION 14.(j) Subsection (a) of this section become effective October 1, 2008, and applies to distributions for months beginning on or after that date. Subsections (g) and (h) of this section become effective October 1, 2009, and apply to distributions for months beginning on or after that date. The remainder of this section is effective when it becomes law.

OTHER CHANGES

SECTION 15.(a) G.S. 105-113.112 reads as rewritten:

"**§ 105-113.112. Confidentiality of information.**

Information obtained by the Department in the course of administering the tax imposed by this Article, including information on whether the Department has issued a revenue stamp to a person, is confidential tax information and is subject to the following restrictions on disclosure:

(1) G.S. 105-259 prohibits the disclosure of the information, except in the limited circumstances provided in that statute.

(2) The information may not be used as evidence, as defined in G.S. 15A-971, in a criminal prosecution for an offense other than an offense under this Article or under Article 9 of this Chapter. Under this prohibition, no officer, employee, or agent of the Department may testify about the information in a criminal prosecution for an offense other than an offense under this Article or under Article 9 of this Chapter. This subdivision implements the protections against double jeopardy and self-incrimination set out in Amendment V of the United States Constitution and the restrictions in it apply regardless of whether information may be disclosed under G.S. 105-259. This subdivision does not apply to information obtained from a source other than an employee, officer, or agent of the Department. This subdivision does not prohibit testimony by an officer, employee, or agent of the Department concerning an offense committed against that individual in the course of administering this Article. An officer, employee, or agent of the Department who provides evidence or testifies in violation of this subdivision is guilty of a Class 1 misdemeanor."

SECTION 15.(b) This section becomes effective December 1, 2008, and applies to offenses committed on or after that date.

SECTION 16.(a) Part 2D of Article 10 of Chapter 143B of the General Statutes is repealed.

SECTION 16.(b) G.S. 66-58(b)(21) is repealed.

SECTION 16.(c) G.S. 120-123(72) is repealed.

SECTION 16.(d) G.S. 126-5(c1)(20) is repealed.

SECTION 16.(e) G.S. 143B-437.45 reads as rewritten:

"**§ 143B-437.45. Definitions.**

The following definitions apply in this Part:

…

(5) Regional ~~Partnerships. – As defined in G.S. 143B-437.21(6).~~ partnership. – Any of the following:

a. The Western North Carolina Regional Economic Development Commission created in G.S. 158-8.1.

b. The North Carolina's Northeast Commission created in G.S. 158-8.2.

c. The Southeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.3.

d. The North Carolina's Eastern Region Development Commission created in G.S. 158-35.

e. The Charlotte Regional Partnership, Inc.

f. The Research Triangle Regional Partnership.

g. The Piedmont Triad Partnership.

…"

SECTION 17. G.S. 105-538 reads as rewritten:

"**§ 105-538. Administration of taxes.**

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of these additional taxes must be in accordance with Article 39 of this Chapter. G.S. 105-468.1 is an administrative provision that applies to this Article. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B. The Secretary shall not divide the amount allocated to a county between the county and the municipalities within the county. Notwithstanding the provisions of G.S. ~~105-467(c),~~ 105-466(c), during the 2008 calendar year a tax levied under this Article may become effective on the first day of any calendar quarter so long as the county gives the Secretary at least 60 days' advance notice of the new tax levy."

SECTION 18.(a) G.S. 105-277.1(a2) reads as rewritten:

"(a2) Income Eligibility Limit. – ~~Until~~ For the tax year beginning July 1, 2008, the income eligibility limit is twenty-five thousand dollars ($25,000). For taxable years beginning on or after ~~July 1, 2008,~~ July 1, 2009, the income eligibility limit is the amount for the preceding year, adjusted by the same percentage of this amount as the percentage of any cost-of-living adjustment made to the benefits under Titles II and XVI of the Social Security Act for the preceding calendar year, rounded to the nearest one hundred dollars ($100.00). On or before July 1 of each year, the Department of Revenue must determine the income eligibility amount to be in effect for the taxable year beginning the following July 1 and must notify the assessor of each county of the amount to be in effect for that taxable year."

SECTION 18.(b) This section becomes effective for taxable years beginning on or after January 1, 2008.

SECTION 19. G.S. 158-12.1 reads as rewritten:

"**§ 158-12.1. Commission funds secured.**

The Western North Carolina Regional Economic Development Commission, Research Triangle Regional ~~Commission,~~ Partnership, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, North Carolina's Northeast Commission, North Carolina's Eastern Region Development Commission, and Carolinas Partnership, Inc., may deposit money at interest in any bank, savings and loan association, or trust company in this State in the form of savings accounts, certificates of deposit, or such other forms of time deposits as may be approved for county governments. Investment deposits and money deposited in an official depository or deposited at interest shall be secured in the manner prescribed in G.S. 159-31(b). When deposits are secured in accordance with this section, no public officer or employee may be held liable for any losses sustained by an institution because of the default or insolvency of the depository. This section applies to the regional economic development commissions listed in this section only for as long as the commissions are receiving State funds."

MOTOR FUEL TAX LAW CHANGES

SECTION 20. G.S. 105-449.37 reads as rewritten:

"**§ 105-449.37. Definitions; tax liability.**

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

(1) International Fuel Tax Agreement. – The Articles of Agreement adopted by the International Fuel Tax Association, Inc., as amended as of June 1, 2008.

(2) Motor carrier. – A person who operates or causes to be operated on any highway in this State a motor vehicle that is a qualified motor ~~vehicle under the International Fuel Tax Agreement.~~ vehicle. The term does not include the United States, ~~the State,~~ a state, or a political subdivision of ~~the State.~~a state.

~~(1a)~~(3) Motor vehicle. – ~~A motor vehicle as defined in G.S. 105-164.3 other than special mobile equipment as defined in G.S. 105-164.3.~~Defined in G.S. 20-4.01.

~~(2)~~(4) Operations. – ~~Operations of all motor vehicles described in subdivision (1),~~ The movement of a qualified motor vehicle by a motor carrier, whether loaded or empty and whether or not operated for compensation.

~~(2a)~~(5) Person. – Defined in G.S. 105-228.90.

(6) Qualified motor vehicle. – Defined in the International Fuel Tax Agreement.

~~(3)~~(7) Secretary. – ~~The Secretary of Revenue.~~Defined in G.S. 105-228.90.

(b) Liability. – A motor carrier who operates on one or more days of a reporting period is liable for the tax imposed by this Article for that reporting period and is entitled to the credits allowed for that reporting period."

SECTION 21. G.S. 105-449.38 reads as rewritten:

"**§ 105-449.38. Tax levied.**

A road tax for the privilege of using the streets and highways of this State is imposed upon every motor carrier on the amount of motor fuel or alternative fuel used by the carrier in its operations within this State. The tax shall be at the rate established by the Secretary pursuant to G.S. 105-449.80 or G.S. 105-449.136, as appropriate. This tax is in addition to any other taxes imposed on motor ~~carriers~~carriers."

SECTION 22. G.S. 105-449.44 reads as rewritten:

"**§ 105-449.44. How to determine the amount of fuel used in the State; presumption of amount used.**

(a) Calculation. – The amount of motor fuel or alternative fuel a motor carrier uses in its operations in this State for a reporting period is the number of miles the motor carrier travels in this State during that period divided by the calculated miles per gallon for the motor carrier for all qualified motor vehicles during that period.

(b) Presumption. – The Secretary must check reports filed under this Article against the weigh station records and other records of the Division of Motor Vehicles of the Department of Transportation and the State Highway Patrol of the Department of Crime Control and Public Safety concerning motor carriers to determine if motor carriers that are operating in this State are filing the reports required by this Article. ~~The Department may assess a motor carrier for the amount payable based on the presumed mileage. A motor carrier that does either of the following for a quarter is presumed to have traveled in this State during that quarter the number of miles equal to 10 trips of 450 miles each for each of the motor carrier's vehicles:~~ If the records indicate that a motor carrier operated in this State in a quarter and either did not file a report for that quarter or understated its mileage in this State on a report filed for that quarter by at least twenty-five percent (25%), the Secretary may assess the motor carrier for an amount based on the motor carrier's presumed operations. The motor carrier is presumed to have mileage in this State equal to 10 trips of 450 miles each for each of the motor carrier's qualified motor vehicles and to have fuel usage of four miles per gallon.

~~(1) Fails to file a report for the quarter and the records of the Division indicate the carrier operated in this State during the quarter.~~

~~(2) Files a report for the quarter that, based on the records of the Division, understates by at least twenty-five percent (25%) the carrier's mileage in this State for the quarter.~~

(c) Vehicles. – The number of qualified motor vehicles of a motor carrier that is registered under this Article is the number of ~~identification markers~~ sets of decals issued to the carrier. The number of qualified motor vehicles of a carrier that is not registered under this Article is the number of qualified motor vehicles registered by the motor carrier in the carrier's base state under the International Registration Plan."

SECTION 23. G.S. 105-449.47 reads as rewritten:

"**§ 105-449.47. Registration of vehicles.**

(a) Requirement. – A motor carrier that is subject to the International Fuel Tax Agreement may not operate or cause to be operated in this State ~~any vehicle listed in the definition of motor vehicle~~ a qualified motor vehicle unless both the motor carrier and ~~the~~ at least one qualified motor vehicle are registered with the motor carrier's base state jurisdiction. A motor carrier that is not subject to the International Fuel Tax Agreement may not operate or cause to be operated in this State ~~any vehicle listed in the definition of motor vehicle~~ a qualified motor vehicle unless both the motor carrier and ~~the~~ at least one qualified motor vehicle are registered with the Secretary for purposes of the tax imposed by this Article. This subsection applies to a motor carrier that operates a recreational vehicle that is considered a qualified motor vehicle.

(a1) Registration and ~~Identification Marker.~~ Decal. – When the Secretary registers a motor carrier, the Secretary must issue a registration card for the motor carrier and ~~at least one~~ ~~identification marker~~ a set of decals for each qualified motor vehicle ~~operated by~~ the motor ~~carrier.~~ carrier regisers. A motor carrier must keep records of ~~identification markers~~ decals issued to it and must be able to account for all ~~identification markers~~ decals it receives from the Secretary. Registrations and ~~identification markers~~ decals issued by the Secretary are for a calendar year. All ~~identification markers~~ decals issued by the Secretary remain the property of the State. The Secretary may revoke a registration or ~~an identification marker~~ a decal when a motor carrier fails to comply with this Article or Article 36C or 36D of this Subchapter.

A motor carrier must carry a copy of its registration in each motor vehicle operated by the motor carrier when the vehicle is in this State. A motor vehicle must clearly display ~~an identification marker~~ one decal on each side of the vehicle at all times. ~~The identification marker~~ A decal must be affixed to the qualified motor vehicle for which it was issued in the place and manner designated by the authority that issued it.

(b) Exemption. – This section does not apply to the operation of a qualified motor vehicle that is registered in another state and is operated temporarily in this State by a public utility, a governmental or cooperative provider of utility services, or a contractor for one of these entities for the purpose of restoring utility services in an emergency outage."

SECTION 24. G.S. 105-449.47A reads as rewritten:

"**§ 105-449.47A. Reasons why the Secretary can deny an application for a registration and ~~identification marker.~~ decals.**

The Secretary may refuse to register and issue ~~an identification marker~~ a decal to an applicant that has done any of the following:

(1) Had a registration issued under Chapter 105 or Chapter 119 of the General Statutes cancelled by the Secretary for cause.

(2) Had a registration issued by another jurisdiction, pursuant ~~to G.S. 105-449.57,~~ the International Fuel Tax Agreement, cancelled for cause.

(3) Been convicted of fraud or misrepresentation.

(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if registered and issued ~~an identification marker.~~ a decal.

(5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.

(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 25. G.S. 105-449.50 is repealed.

SECTION 26. G.S. 105-449.51 reads as rewritten:

"**§ 105-449.51. Violations declared to be misdemeanors.**

Any person who operates or causes to be operated on a highway in this State a qualified motor vehicle that does not carry a registration card as required by this Article, does not properly display ~~an identification marker~~ a decal as required by this Article, or is not registered in accordance with this Article ~~is guilty of~~ commits a Class 3 misdemeanor ~~and, upon conviction thereof, shall be fined~~ and is punishable by a fine of two hundred dollars ($200.00). Each day's operation in violation ~~of any provision~~ of this section ~~shall constitute~~ constitutes a separate offense."

SECTION 27. G.S. 105-449.52 reads as rewritten:

"**§ 105-449.52. Civil penalties applicable to motor carriers.**

(a) Penalty. – A motor carrier who does any of the following is subject to a civil penalty:

(1) Operates in this State or causes to be operated in this State a qualified motor vehicle that either fails to carry the registration card required by this Article or fails to display ~~an identification marker~~ a decal in accordance with this Article. The amount of the penalty is one hundred dollars ($100.00).

(2) Is unable to account for ~~identification markers~~ a decal the Secretary issues the motor carrier, as required by G.S. 105-449.47. The amount of the penalty is one hundred dollars ($100.00) for each ~~identification marker~~ decal for which the carrier is unable to ~~account for.~~ account.

(3) Displays ~~an identification marker~~ a decal on a qualified motor vehicle operated by a motor carrier that was not issued to the carrier by the Secretary under G.S. 105-449.47. The amount of the penalty is one thousand dollars ($1,000) for each ~~identification marker~~ decal unlawfully obtained. Both the licensed motor carrier to whom the Secretary issued the ~~identification marker~~ decal and the motor carrier displaying the unlawfully obtained ~~identification marker~~ decal are jointly and severally liable for the penalty under this subdivision.

(a1) Payment. – A penalty imposed under this section is payable to the agency that assessed the penalty. When a qualified motor vehicle is found to be operating without a registration card or ~~an identification marker~~ a decal or with ~~an identification marker~~ a decal the Secretary did not issue for the vehicle, the qualified motor vehicle may not be driven for a purpose other than to park ~~the motor vehicle~~ it until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that ~~operation of the motor vehicle~~ operating it will not jeopardize collection of the penalty.

(b) Hearing. – The procedure set out in G.S. 105-449.119 for protesting a penalty imposed under Article 36C, Part 6, of this Chapter applies to a penalty imposed under this section."

SECTION 28. G.S. 105-449.60 reads as rewritten:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

(1) Additive. – A de minimus amount of product that is added or mixed with motor fuel. Examples of an additive include fuel system detergent, an oxidation inhibitor, gasoline antifreeze, or an octane enhancer.

(2) Aviation gasoline. – Fuel blended or produced specifically for use in an aircraft motor.

~~(1)~~(3) Biodiesel. – Any fuel or mixture of fuels derived in whole or in part from agricultural products or animal fats or wastes from these products or fats.

~~(1a)~~(4) Biodiesel provider. – A person who does any of the following:

a. Produces an average of no more than 500,000 gallons of biodiesel per month during a calendar year. A person who produces more than this amount is a refiner.

b. Imports biodiesel outside the terminal transfer system by means of ~~a marine vessel,~~ a transport truck, a railroad tank car, or a tank wagon.

~~(1b) to (1d) Reserved for future codification purposes.~~

~~(1c)~~(5) Blended fuel. – A mixture composed of gasoline or diesel fuel and another liquid, other than ~~a de minimus amount of a product such as carburetor detergent or oxidation inhibitor,~~ an additive, that can be used as a fuel in a highway vehicle.

~~(2)~~(6) Blender. – A person who produces blended fuel outside the terminal transfer system.

(7) Bonded importer. – A person, other than a supplier, who imports by transport truck or another means of transfer outside the terminal transfer system motor fuel removed from a terminal located in another state in one or more of the following circumstances:

a. The state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal of the fuel at that state's rate or the rate of the destination state.

b. The supplier of the fuel is not an elective supplier.

c. The supplier of the fuel is not a permissive supplier.

~~(3)~~(8) ~~Bulk-end user.~~ Bulk end-user. – A person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle.

~~(4)~~(9) Bulk plant. – A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

~~(5)~~(10) Code. – Defined in G.S. 105-228.90.

~~(6)~~(11) Destination state. – The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.

~~(7)~~(12) Diesel fuel. – Any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle. The term includes biodiesel, fuel oil, heating oil, high-sulfur dyed diesel fuel, and kerosene. The term does not include jet ~~fuel sold to a buyer who is certified to purchase jet fuel under the Code.~~fuel.

~~(8)~~(13) Distributor. – A person who ~~acquires motor fuel from a supplier or from another distributor for subsequent sale.~~does one or more of the activities listed in this subdivision. The term does not include a person who sells motor fuel only at retail.

a. Produces, refines, blends, compounds, or manufactures motor fuel.

b. Transports motor fuel into a state or exports motor fuel out of a state.

c. Engages in the distribution of motor fuel primarily by tank car or tank truck or both.

d. Operates a bulk plant where the person has active motor fuel bulk storage.

(14) Diversion. – The movement of motor fuel from a terminal to a state other than the destination state indicated on the original bill of lading.

~~(9)~~(15) Dyed diesel fuel. – Diesel fuel that meets the dyeing and marking requirements ~~of § 4082 of the Code.~~as set out in 26 C.F.R. § 48.4082.1.

~~(10)~~(16) Elective supplier. – A supplier that is required to be licensed in this State and that elects to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

~~(10a)~~(17) Exempt card or code. – A credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel.

~~(11)~~(18) Export. – To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or for the seller constitutes an export by the seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

~~(12)~~(19) Fuel alcohol. – Alcohol, methanol, or fuel grade ethanol.

~~(13)~~(20) Fuel alcohol provider. – A person who does any of the following:

a. Produces an average of no more than 500,000 gallons of fuel alcohol per month during a calendar year. A person who produces more than this amount is a refiner.

b. Imports fuel alcohol outside the terminal transfer system by means of ~~a marine vessel,~~ a transport truck, a railroad tank car, or a tank wagon.

~~(14)~~(21) Gasohol. – A blended fuel composed of gasoline and fuel grade ethanol.

~~(15)~~(22) Gasoline. – Any of the following:

a. All products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method. The term does not include aviation gasoline.

b. A petroleum product component of gasoline, such as naptha, reformate, or toluene.

c. Gasohol.

d. Fuel alcohol.

~~The term does not include aviation gasoline sold for use in an aircraft motor. "Aviation gasoline" is gasoline that is designed for use in an aircraft motor and is not adapted for use in an ordinary highway vehicle.~~

~~(16)~~(23) Gross gallons. – The total amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.

~~(17)~~(24) Highway. – Defined in G.S. 20-4.01(13).

~~(18)~~(25) Highway vehicle. – A self-propelled vehicle that is designed for use on a highway.

~~(19)~~(26) Import. – To bring motor fuel into this State by any means of conveyance other than in the fuel supply tank of a highway vehicle. In applying this definition, motor fuel delivered into this State from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of-state by or for the purchaser constitutes an import by the purchaser.

~~(19a)~~(27) ~~In-State-only~~ In-State supplier. – Either of the following:

a. A supplier that is required to have a license and elects not to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

b. A supplier that does business only in this State.

(28) Jet fuel. – Kerosene that meets all of the following requirements:

a. Has a maximum distillation temperature of 400 degrees Fahrenheit at the ten percent (10%) recovery point and a final maximum boiling point of 572 degrees Fahrenheit.

b. Meets American Society Testing Materials Specification D 1655 and Military Specifications MIL-T-5624P and MIL-T-83133D, Grades JP-5 and JP-8.

(29) Kerosene. – Petroleum oil that is free from water, glue, and suspended matter and that meets the specifications and standards adopted under G.S. 119-26 by the Gasoline and Oil Inspection Board.

(30) Marine vessel. – A ship, boat, or other watercraft used or capable of being used to move in or through a waterway.

~~(20)~~(31) Motor fuel. – Gasoline, diesel fuel, and blended fuel.

~~(21)~~(32) Motor fuel rate. – The rate of tax set in G.S. 105-449.80.

~~(22)~~(33) Motor fuel transporter. – A person who transports motor fuel by ~~pipeline or who transports motor fuel outside the terminal transfer system by means of a~~ pipeline, transport truck, ~~a~~ railroad tank car, or ~~a~~ marine vessel.

~~(23)~~(34) Net gallons. – The amount of motor fuel measured in gallons when corrected to a temperature of 60 degrees Fahrenheit and a pressure of 14 7/10 pounds per square inch.

(35) Occasional importer. – One or more of the following that imports motor fuel by any means outside the terminal transfer system:

a. A distributor that imports motor fuel on an average basis of no more than once a month during a calendar year.

b. A bulk end-user that acquires motor fuel for import from a bulk plant and is not required to be licensed as a bonded importer.

c. A distributor that imports motor fuel for use in a race car.

~~(24)~~(36) Permissive supplier. – An out-of-state supplier that elects, but is not required, to have a supplier's license under this Article.

~~(25)~~(37) Person. – Defined in G.S. 105-228.90.

(38) Pipeline. – A fuel distribution system that moves motor fuel, in bulk, through a pipe either from a refinery to a terminal or from a terminal to another terminal.

~~(26)~~(39) Position holder. – The person who holds the inventory position ~~in~~ on the motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position ~~in~~ on the motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

~~(27)~~(40) Rack. – A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a transport truck, a railroad tank car, or another means of transfer that is outside the terminal transfer system.

~~(27a)~~(41) Refiner. – A person who owns, operates, or controls a refinery. The term includes a person who produces an average of more than 500,000 gallons of fuel alcohol or biodiesel a month during a calendar year.

~~(27b)~~(42) Refinery. – A facility used to process crude oil, unfinished oils, natural gas liquids, or other hydrocarbons into motor fuel and from which fuel may be removed by pipeline or vessel or at a rack. The term does not include a facility that produces only blended fuel or gasohol.

~~(28)~~(43) Removal. – A physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or another means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

~~(29)~~(44) Retailer. – A person who maintains storage facilities for motor fuel and who sells the fuel at retail or dispenses the fuel at a retail location.

~~(30)~~(45) Secretary. – Defined in G.S. 105-228.90.

~~(31)~~(46) Supplier. – Any of the following:

a. A position holder or a person who receives motor fuel pursuant to a two-party exchange.

b. A fuel alcohol provider.

c. A biodiesel provider.

d. A refiner.

~~(32)~~(47) System transfer. – Either of the following:

a. A transfer of motor fuel within the terminal transfer system.

b. A transfer, by transport truck or railroad tank car, of fuel grade ethanol.

~~(33)~~(48) Tank wagon. – A truck that is not a transport truck and is designed or used to carry at least 1,000 gallons of motor fuel.

(49) Tank wagon importer. – A person who imports only by means of a tank wagon motor fuel that is removed from a terminal or a bulk plant located in another state.

~~(33a)~~(50) Tax. – An inspection or other excise tax on motor fuel and any other fee or charge imposed on motor fuel on a per-gallon basis.

~~(34)~~(51) Terminal. – A motor fuel storage and distribution facility that has been assigned a terminal control number by the Internal Revenue Service, is supplied by pipeline or marine vessel, and from which motor ~~fuel~~ fuel, jet fuel, or aviation gasoline may be removed at a rack.

~~(35)~~(52) Terminal operator. – A person who owns, operates, or otherwise controls a terminal.

~~(36)~~(53) Terminal transfer system. – The motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. The term has the same meaning as "bulk transfer/terminal system" under 26 C.F.R. § 48.4081-1.

~~(37)~~(54) Transmix. – Either of the following:

a. The buffer or interface between two different products in a pipeline shipment.

b. A mix of two different products within a refinery or terminal that results in an off-grade mixture.

~~(38)~~(55) Transport truck. – A ~~semitrailer~~ tractor trailer ~~combination rig~~ designed or used to transport loads of motor fuel over a highway.

~~(39)~~(56) Trustee. – A person who is licensed as a ~~supplier, an elective supplier, or a permissive~~ supplier and who receives tax payments from and on behalf of a licensed ~~distributor.~~distributor or licensed importer for remittance to the Secretary.

~~(40)~~(57) Two-party exchange. – A transaction in which motor fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement under which the supplier that is the position holder agrees to deliver motor fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.

~~(41)~~(58) User. – A person who owns or operates a licensed highway vehicle that has a registered gross vehicle weight of at least 10,001 pounds and who does not maintain storage facilities for motor fuel."

SECTION 29. G.S. 105-449.65 reads as rewritten:

"**§ 105-449.65. List of persons who must have a license.**

(a) License. – A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

(1) A refiner.
(2) A supplier.
(3) A terminal operator.
(4) An importer.
(5) An exporter.
(6) A blender.
(7) A motor fuel transporter.
(8) Repealed by Session Laws 1999-438, s. 20, effective August 10, 1999.
(9) Repealed by Session Laws 1999-438, s. 21, effective August 10, 1999.
(10) A distributor who purchases motor fuel from an elective or permissive supplier at an out-of-state terminal for import into this State.

(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless ~~this subsection~~ one of the following subdivisions provides otherwise. ~~A~~

(1) Supplier. – A person who is licensed as a supplier is considered to have a license as a distributor. A person who is licensed as a supplier and is a biodiesel provider is considered to have a license as a blender.

(2) Importer. – A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State.

(3) Distributor. – A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter.

(4) Transporter. – A person who ~~is licensed as a distributor or a blender~~ has any license issued under this section other than a motor fuel transporter license and who transports ~~fuel is considered to be licensed as a motor fuel transporter.~~motor fuel."

SECTION 30. G.S. 105-449.66 reads as rewritten:

"**§ 105-449.66. ~~Types of importers; restrictions on who can get a license as an importer.~~Importer licensing.**

~~(a) Types. –~~ An applicant for a license as an importer must indicate on the application the type of importer license sought. The types of importers are bonded importer, occasional importer, and tank wagon importer. ~~as follows:~~

~~(1) Bonded importer. – A bonded importer is a person, other than a supplier, who imports, by transport truck or another means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in another state in any of the following circumstances:~~

~~a. The state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal either at that state's rate or the rate of the destination state.~~

~~b. The supplier of the fuel is not an elective supplier.~~

~~c. The supplier of the fuel is not a permissive supplier.~~

~~(2) Occasional importer. – An occasional importer is any of the following that imports motor fuel by any means outside the terminal transfer system:~~

~~a. A distributor that imports motor fuel on an average basis of no more than once a month during a calendar year.~~

~~b. A bulk-end user that acquires motor fuel for import from a bulk plant and is not required to be licensed as a bonded importer.~~

~~c. A distributor that imports motor fuel for use in a race car.~~

~~(3) Tank wagon importer. – A tank wagon importer is a person who imports, only by means of a tank wagon, motor fuel that is removed from a terminal or a bulk plant located in another state.~~

~~(b) Restrictions. –~~ A person may not be licensed as more than one type of importer. A ~~bulk-end user~~ bulk end-user that imports motor fuel from a terminal of a supplier that is not an elective or a permissive supplier must be licensed as a bonded importer. A ~~bulk-end user~~ bulk end-user that imports motor fuel from a bulk plant and is not required to be licensed as a bonded importer must be licensed as an occasional importer. A ~~bulk-end user~~bulk end-user that imports motor fuel only from a terminal of an elective or a permissive supplier is not required to be licensed as an importer."

SECTION 31. G.S. 105-449.68 reads as rewritten:

"**§ 105-449.68. Restrictions on who can get a license as a distributor.**

A ~~bulk-end user~~ bulk end-user of motor fuel may not be licensed as a distributor unless the ~~bulk-end user~~ bulk end-user also acquires motor fuel from a supplier or from another distributor for subsequent sale. This restriction does not apply to a ~~bulk-end user~~ bulk end-user that was licensed as a distributor on January 1, 1996. If a distributor license held by a ~~bulk-end user~~ bulk end-user on January 1, 1996, is subsequently cancelled, the ~~bulk-end user~~ bulk end-user is subject to the restriction set in this section."

SECTION 32. G.S. 105-449.69(c) reads as rewritten:

"(c) Federal Certificate. – An applicant for a license as a refiner, a supplier, a terminal operator, or a ~~blender, or a permissive supplier~~ blender must have a federal Certificate of Registry that is issued under § 4101 of the Code and authorizes the applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An applicant that is required to have a federal Certificate of Registry must include the registration number of the certificate on the application for a license under this section.

An applicant for a license as an importer, an exporter, or a distributor that has a federal Certificate of Registry issued under § 4101 of the Code must include the registration number of the certificate on the application for a license under this section."

SECTION 33 . G.S. 105-449.70(a) reads as rewritten:

"(a) Election. – An applicant for a license as a supplier may elect on the application to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state. The Secretary must provide for this election on the application form. A supplier that makes the election allowed by this section is an elective supplier. A supplier that does not make the election allowed by this section is an ~~in-State-only~~ in-State supplier.

A supplier that does not make the election on the application for a supplier's license may make the election later by completing an election form provided by the Secretary. A supplier that does not make the election may not act as an elective supplier for motor fuel that is removed at a terminal in another state and has this State as its destination state."

SECTION 34. G.S. 105-449.74 reads as rewritten:

"**§ 105-449.74. Issuance of license.**

Upon approval of an application, the Secretary must issue a license to the applicant. A supplier's license must indicate the category of the supplier. An importer's license must indicate the category of the importer. A license holder must maintain and display a copy of the license issued under this Part in a conspicuous place at each place of business of the license holder. A license is not transferable and remains in effect until surrendered or cancelled."

SECTION 35. G.S. 105-449.75 reads as rewritten:

"**§ 105-449.75. License holder must notify the Secretary of discontinuance of business.**

A license holder that stops engaging in this State in the business for which the license was issued must give the Secretary written notice of the change and must surrender the license to the Secretary. The notice must give the date the change takes effect and, if the license holder has transferred the business to another by sale or otherwise, the date of the transfer and the name and address of the person to whom the business is transferred.

~~If the~~ The license holder is ~~a supplier,~~ responsible for all taxes for which the ~~supplier~~ license holder is liable under this Article but are not yet ~~due become due on the date of the change.~~due. If the ~~supplier~~ license holder has transferred the business to another and does not give the notice required by this section, the person to whom the ~~supplier~~ license holder has transferred the business is liable for the amount of any tax the ~~supplier~~ license holder owed the State on the date the business was transferred. The liability of the person to whom the business is transferred is limited to the value of the property acquired from the ~~supplier.~~license holder."

SECTION 36. G.S. 105-449.81 reads as rewritten:

"**§ 105-449.81. Excise tax on motor fuel.**

An excise tax at the motor fuel rate is imposed on motor fuel that is:

(1) Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax imposed by § 4081 of the Code.

(2) Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the federal excise tax imposed by § 4081 of the Code.

(3) Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in this State and would have been subject to the federal excise tax imposed by § 4081 of the Code if it had been removed at a terminal or bulk plant rack in this State instead of imported.

(3a) Repealed by Session Laws 2007-527, s. 38(a), effective January 1, 2008.

(4) Blended fuel made in this State or imported to this State.

(5) Transferred within the terminal transfer system and, upon transfer, is subject to the federal excise tax imposed by section 4081 of the Code.

(6) Transferred within the terminal transfer system to a person that is not licensed as a supplier with the State.

(7) Fuel grade ethanol that meets any of the following descriptions:

a. Is produced in this State, is removed from the storage facility at the production location, and is not delivered to a terminal in this State.

b. Is imported to this State outside the terminal transfer system and is not delivered to a terminal.

c. Is removed from a terminal."

SECTION 37. G. S. 105-449.82(c) reads as rewritten:

"(c) Terminal Rack Removal. – The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed at a terminal rack in this State is payable by the person that first receives the fuel upon its removal from the terminal. If the motor fuel is removed by an unlicensed distributor, the supplier of the fuel is jointly and severally liable for the tax due on the fuel. If the motor fuel is sold by a person who is not licensed as a supplier, as required by this Article, the terminal operator, the person selling the fuel, and the person removing the fuel are jointly and severally liable for the tax due on the fuel. If the motor fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person removing the fuel are jointly and severally liable for the tax due on the fuel.

If the motor fuel is removed for export by an unlicensed exporter, the exporter is liable for tax on the fuel at the motor fuel rate and at the rate of the destination state. ~~The liability for the tax at the motor fuel rate applies when the Department assesses the unlicensed exporter for the tax.~~ A supplier who sells motor fuel to a unlicensed exporter is jointly and severally liable for the tax due on the fuel at the motor fuel rate."

SECTION 38. G.S. 105-449.83A reads as rewritten:

"**§ 105-449.83A. Liability for tax on fuel grade ethanol.**

The excise tax imposed by ~~G.S. 105-449.81(3a)~~ G.S. 105-449.81 on fuel grade ethanol removed from a storage facility or terminal or imported to the State is payable by the fuel alcohol provider. ~~The excise tax imposed by that subdivision on fuel grade ethanol imported to this State is payable by the importer.~~"

SECTION 39. G.S. 105-449.85 reads as rewritten:

"**§ 105-449.85. Compensating tax on and liability for unaccounted for motor fuel losses at a terminal.**

(a) Tax. – An excise tax at the motor fuel rate is imposed annually on unaccounted for motor fuel losses at a terminal that exceed one-half of one percent (0.5%) of the number of net gallons removed from the terminal during the year by a system transfer or at a terminal rack. To determine if this tax applies, the terminal operator of the terminal must determine the difference between the following:

(1) The amount of motor fuel in inventory at the terminal at the beginning of the year plus the amount of motor fuel received by the terminal during the year.

(2) The amount of motor fuel in inventory at the terminal at the end of the year plus the amount of motor fuel removed from the terminal during the year.

(b) Liability. – The terminal operator whose motor fuel is unaccounted for is liable for the tax imposed by this section and is liable for a penalty equal to the amount of tax payable. Motor fuel received by a terminal operator and not shown on an informational return filed by the terminal operator with the Secretary as having been removed from the terminal is presumed to be unaccounted ~~for.~~ for motor fuel. A terminal operator may establish that it can account for motor fuel received at a terminal but not shown on an informational return as having been removed from the terminal if the motor fuel was lost or part of a ~~transmix and is therefore not unaccounted for.~~ transmix."

SECTION 40. G.S. 105-449.86(b) reads as rewritten:

(b) Liability. – If the distributor of dyed diesel fuel that is taxable under this section is not liable for the tax imposed by this section, the person that acquires the fuel is liable for the tax. The distributor of dyed diesel fuel that is taxable under this section is liable for the tax imposed by this section in the following circumstances:

(1) When the person acquiring the dyed diesel fuel has storage facilities for the fuel and is therefore a ~~bulk-end user~~ bulk end-user of the fuel.

(2) When the person acquired the dyed diesel fuel from a retail outlet of the distributor by using an access card or code indicating that the person's use of the fuel is taxable under this section."

SECTION 41. G.S. 105-449.87(b) reads as rewritten:

"(b) General Liability. – The operator of a highway vehicle that uses motor fuel that is taxable under subdivisions (a)(1) through (a)(3) of this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for the tax. If the ~~end seller~~ end-seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the ~~end seller~~ end-seller is jointly and severally liable for the tax. If the Secretary determines that a ~~bulk-end user~~ bulk end-user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel is dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle. An ~~end seller~~ end-seller of dyed diesel fuel is considered to have known or had reason to know that the fuel would be used for a purpose that is taxable under this section if the ~~end seller~~ end-seller delivered the fuel into a storage facility that was not marked as required by G.S. 105-449.123."

SECTION 42. G.S. 105-449.89 reads as rewritten:

"**§ 105-449.89. ~~Removals by out-of-state bulk-end user.~~Restrictions on removal of motor fuel from terminal.**

(a) By Bulk End-User. – An out-of-state ~~bulk-end user~~ bulk end-user may not remove motor fuel from a terminal in this State for use in the state in which the ~~bulk-end user~~ bulk end-user is located unless the ~~bulk-end user~~ bulk end-user is licensed under this Article as an exporter. An out-of-state ~~bulk-end user~~ bulk end-user that is not licensed under this Article may remove motor fuel from a bulk plant in this State.

(b) To Marine Vessel. – A supplier may not transfer motor fuel from a terminal to a marine vessel unless the person to whom the supplier transfers the motor fuel is licensed as a supplier."

SECTION 43. G.S. 105-449.91 reads as rewritten:

"**§ 105-449.91. Remittance of tax to supplier.**

(a) Distributor. – A distributor must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. A licensed distributor has the right to defer the remittance of tax to the supplier, as trustee, until the date the trustee must pay the tax to this State or to another state. The time when an unlicensed distributor must remit tax to a supplier is governed by the terms of the contract between the supplier and the unlicensed distributor.

(b) Exporter. – ~~An~~ A licensed exporter must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. The time when ~~an~~ a licensed exporter must remit tax to a supplier is governed by the law of the destination state of the exported motor fuel.

(c) Importer. – A licensed importer must remit tax due on motor fuel removed at a terminal rack of a permissive or an elective supplier to the supplier of the fuel. A licensed importer that removes fuel from a terminal rack of a permissive or an elective supplier has the right to defer the remittance of tax to the supplier until the date the supplier must pay the tax to this State.

(d) General. – A person who removes motor fuel at a terminal rack and is not subject to another subsection is this section must remit tax due on the motor fuel to the supplier of the fuel. The time a person must remit tax to a supplier is governed by the terms of the contract between the supplier and the person. The method by which a ~~distributor, a licensed exporter, or a licensed importer~~ person must remit tax to a supplier under this section is governed by the terms of the contract between the supplier and ~~the distributor, exporter, or licensed importer and the supplier.~~ that person.

G.S. 105-449.76 governs the cancellation of a license of a distributor, an exporter, and an importer."

SECTION 44. G.S. 105-449.96 reads as rewritten:

"**§ 105-449.96. Information required on return filed by supplier.**

A return of a supplier must list all of the following information and any other information required by the Secretary:

(1) The number of gallons of tax-paid motor fuel received by the supplier during the month, sorted by type of ~~fuel, seller, point of origin, destination state, and carrier.~~fuel.

(2) The number of gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of ~~fuel, person receiving the fuel, terminal code, and carrier.~~fuel.

(3) The number of gallons of motor fuel removed during the month for export, sorted by type of ~~fuel, person receiving the fuel, terminal code, destination state, and carrier.~~fuel.

(4) The number of gallons of motor fuel removed during the month at a terminal located in another state for destination to this State, as indicated on the shipping document for the fuel, sorted by type of ~~fuel, person receiving the fuel, terminal code, and carrier.~~fuel.

(5) The number of gallons of motor fuel the supplier sold during the month to a governmental unit whose use of fuel is exempt from the tax, ~~any of the following,~~ sorted by type of ~~fuel, exempt entity, person receiving the fuel, terminal code, and carrier:~~fuel.

~~a. A governmental unit whose use of fuel is exempt from the tax.~~

~~b. A licensed distributor or importer that resold the motor fuel to a governmental unit whose use of fuel is exempt from the tax, as indicated by the distributor or importer.~~

~~c. A licensed exporter that resold the motor fuel to a person whose use of fuel is exempt from tax in the destination state, as indicated by the exporter.~~

(6) The amount of discounts allowed under G.S. 105-449.93(b) on motor fuel sold during the month to licensed distributors or licensed importers.

(7) The number of gallons of motor fuel the supplier exchanged during the month with another licensed supplier pursuant to a two-party exchange agreement, sorted by type of ~~fuel, licensed supplier receiving the fuel, and terminal code.~~fuel."

SECTION 45. G.S. 105-449.97(c) reads as rewritten:

"(c) Percentage Discount. – A supplier that sells motor fuel directly to an unlicensed distributor or to the ~~bulk-end user,~~ bulk end-user, the retailer, or the user of the fuel may take the same percentage discount on the fuel that a licensed distributor may take under G.S. 105-449.93(b) when making deferred payments of tax to the supplier."

SECTION 46. G.S. 105-449.100 reads as rewritten:

"**§ 105-449.100. Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.**

(a) Requirement. – A terminal operator must file a monthly informational return with the Secretary that shows the amount of motor fuel received or removed from the terminal during the month. A terminal operator must report all motor fuel removed from an out-of-state terminal that has this State as its destination state.

(b) Content. – The return is due on the same date as a monthly return due under G.S. 105-449.90. The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the ~~fuel.~~fuel, sorted by type of fuel.

(2) The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the ~~fuel.~~fuel, sorted by type of fuel.

(3) The number of gallons of motor fuel gained or lost at the terminal during the month.

(4) The number of gallons of motor fuel in inventory at the beginning of each month and at the end of each month.

(c) Due Date. – The return is due on the date a monthly return is due under G.S. 105-449.90."

SECTION 47. G.S. 105-449.102 reads as rewritten:

"**§ 105-449.102. Distributor to file return showing exports from a bulk plant.**

(a) ~~Return.~~ Requirement. – A distributor that exports motor fuel from a bulk plant located in this State must file a monthly return with the Secretary that shows the exports. ~~The return is due on the same date as a monthly return due under G.S. 105-449.90.~~ The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel.

(b) Content. – The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel exported during the month.

(2) The destination state of the motor fuel exported during the month.

(3) A certification that the distributor has paid to the destination state of the motor fuel exported during the month, or will pay on a timely basis, the amount of tax due that state on the fuel.

(c) Due Date. – The return is due on the date a monthly return is due under G.S. 105-449.90."

SECTION 48. G.S. 105-449.105 reads as rewritten:

"**§ 105-449.105. ~~Refunds upon application~~ Monthly refunds for tax paid on exempt fuel, lost fuel, and accidental mixes that result in fuel ~~unsalable~~ unsuitable for highway use.**

(a) Exempt Fuel. – An entity whose use of motor fuel is exempt from tax may obtain a monthly refund of any motor fuel excise tax the entity pays on its motor fuel. A person who sells motor fuel to an entity whose use of motor fuel is exempt from tax may obtain a monthly refund of any motor fuel excise tax the person pays on motor fuel it sells to the entity. A credit card company that issues a credit card to an entity whose use of motor fuel is exempt from tax may obtain a monthly refund of any motor fuel excise tax the company pays on motor fuel the entity purchases using the credit card.

A person may obtain a monthly refund of tax paid by the person on exported fuel, including fuel whose shipping document shows this State as the destination state but was diverted to another state in accordance with the diversion procedures established by the Secretary. An out-of-state bulk end-user is not allowed a refund on fuel exported from a bulk plant unless the bulk end-user is licensed as an exporter.

(b) Lost Fuel. – A supplier, an importer, or a distributor that loses tax-paid motor fuel due to damage to a conveyance transporting the motor fuel, fire, a natural disaster, an act of war, or an accident may obtain a monthly refund for the tax paid on the fuel.

(c) Accidental Mixes. – A person that accidentally combines any of the following may obtain a monthly refund for the amount of tax paid on the fuel:

(1) Dyed diesel fuel with tax-paid motor fuel.

(2) Gasoline with diesel fuel.

(3) Undyed diesel fuel with dyed kerosene.

(d) Repealed by Session Laws 1998-98, s. 29.

(e) Refund Amount. – The amount of a refund allowed under this section is the amount of excise tax paid, less the amount of any discount allowed on the fuel under G.S. 105-449.93."

SECTION 49. G.S. 105-449.105A(a) reads as rewritten:

"(a) Refund. – A distributor who sells kerosene to any of the following may obtain a monthly refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

…"

SECTION 50. G.S. 105-449.105A(a)(1) reads as rewritten:

"(1) The ~~end user~~ end-user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the ~~end user~~ end-user that contains fuel used only for one of the following purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable:

a. Heating.

b. Drying crops.

c. A manufacturing process."

SECTION 51. G.S. 105-449.108(a) reads as rewritten:

"(a) Due Dates. – The due dates of applications for refunds are as follows:

Refund Period	Due Date
Annual	April 15 after the end of the year
Quarterly	Last day of the month after the end of the quarter
Monthly	22nd day after the end of the month
~~Upon Application~~	~~Last day of the month after the~~

~~month in which tax was paid or the event occurred that is the basis of the refund.~~"

SECTION 52. G.S. 105-449.115(b) reads as rewritten:

"(b) Content. – A shipping document issued by a terminal operator or the operator of a bulk plant must contain the following information and any other information required by the Secretary:

(1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received.

(1a) The type of motor fuel loaded.

(2) The date the motor fuel was loaded.

(3) The gross gallons loaded.

(3a) The motor fuel transporter for the motor fuel.

(4) The destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent.

(5) If the document is issued by a terminal operator, the document must be machine printed and it must contain the following information:

a. The net gallons loaded.

b. A tax responsibility statement indicating the name of the supplier that is responsible for the tax due on the motor fuel."

SECTION 53. G.S. 105-449.117(a) reads as rewritten:

"(a) Violation. – It is unlawful to use dyed diesel fuel or other non-tax-paid fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless that use is allowed under section 4082 of the Code. It is unlawful to use ~~undyed diesel~~ motor fuel or alternative fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless the tax imposed by this ~~Article~~ Article, Article 36D of this Chapter, or Article 3 of Chapter 119 of the General Statutes has been paid. A person who violates this section is guilty of a Class 1 misdemeanor and is liable for a civil penalty."

SECTION 54. G.S. 105-449.121(b) reads as rewritten:

"(b) Inspection. – The Secretary or a person designated by the Secretary may do any of the following to determine tax liability under this Article:

(1) Audit ~~a distributor or~~ a person who is required to have or elects to have a license under this Article.

(2) Audit a distributor, a retailer, a bulk-end user, or a motor fuel user that is not licensed under this Article.

(3) Examine a tank or other equipment used to make, store, or transport motor fuel, diesel dyes, or diesel markers.

(4) Take a sample of a product from a vehicle, a tank, or another container in a quantity sufficient to determine the composition of the product.

(5) Stop a vehicle for the purpose of taking a sample of motor fuel from the vehicle."

SECTION 55. G.S. 105-449.130 reads as rewritten:

"**§ 105-449.130. Definitions.**

The following definitions apply in this Article:

(1) Alternative fuel. – A combustible gas or liquid that can be used to generate power to operate a highway vehicle and that is not subject to tax under Article 36C of this Chapter.

(1a) ~~Bulk-end user.~~ Bulk end-user. – A person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.

(2) Highway. – Defined in ~~G.S. 20-4.01(13).~~ G.S. 105-449.60.

(3) Highway vehicle. – Defined in G.S. 105-449.60.

(4) Motor fuel. – Defined in G.S. 105-449.60.

(5) Motor fuel rate. – Defined in G.S. 105-449.60.

(6) Provider of alternative fuel. – A person who does one or more of the following:

a. Acquires alternative fuel for sale or delivery to a ~~bulk-end user~~ bulk end-user or a retailer.

b. Maintains storage facilities for alternative fuel, part or all of which the person uses or sells to someone other than a ~~bulk-end user~~ bulk end-user or a retailer to operate a highway vehicle.

c. Sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicle to the engine of the vehicle.

d. Imports alternative fuel to this State, by a means other than the usual tank or receptacle connected with the engine of a highway vehicle, for use by that person to operate a highway vehicle.

(7) Retailer. – A person who maintains storage facilities for alternative fuel and who sells the fuel at retail or dispenses the fuel at a retail location to operate a highway vehicle."

SECTION 56. G.S. 105-449.131 reads as rewritten:

"**§ 105-449.131. List of persons who must have a license.**

A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

(1) A provider of alternative fuel.

(2) A ~~bulk-end user.~~ bulk end-user.

(3) A retailer."

SECTION 57. G.S. 105-449.133(a) reads as rewritten:

"(a) Who Must Have Bond. – The following applicants for a license must file with the Secretary a bond or an irrevocable letter of credit:

(1) An alternative fuel provider.

(2) A retailer or a ~~bulk-end user~~ bulk end-user that intends to store highway and nonhighway alternative fuel in the same storage facility."

SECTION 58. G.S. 105-449.137(a) reads as rewritten:

"(a) Liability. – A ~~bulk-end user~~ bulk end-user or retailer that stores highway and nonhighway alternative fuel in the same storage facility is liable for the tax imposed by this Article. The tax payable by a ~~bulk-end user~~ bulk end-user or retailer applies when fuel is withdrawn from the storage facility. The alternative fuel provider that sells or delivers alternative fuel is liable for the tax imposed by this Article on all other alternative fuel."

SECTION 59. G.S. 105-449.138 reads as rewritten:

"**§ 105-449.138. Requirements for ~~bulk-end users~~ bulk end-users and retailers.**

(a) Informational Return. – A ~~bulk-end user~~ bulk end-user and a retailer must file a quarterly informational return with the Secretary. A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return.

The return must give the following information and any other information required by the Secretary:

(1) The amount of alternative fuel received during the quarter.

(2) The amount of alternative fuel sold or used during the quarter.

(b) Storage. – A ~~bulk-end user~~ bulk end-user or a retailer may store highway and nonhighway alternative fuel in separate storage facilities or in the same storage facility. If highway and nonhighway alternative fuel are stored in separate storage facilities, the facility for the nonhighway fuel must be marked in accordance with the requirements set by G.S. 105-449.123 for dyed diesel storage facilities. If highway and nonhighway alternative fuel are stored in the same storage facility, the storage facility must be equipped with separate metering devices for the highway fuel and the nonhighway fuel. If the Secretary determines that a ~~bulk-end user~~ bulk end-user or retailer used or sold alternative fuel to operate a highway vehicle when the fuel was dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle."

SECTION 60. G.S. 105-449.139(c) reads as rewritten:

"(c) Lists. – The Secretary must give a list of licensed alternative fuel providers to each licensed ~~bulk-end user~~ bulk end-user and licensed retailer. The Secretary must also give a list of licensed ~~bulk-end users~~ bulk end-users and licensed retailers to each licensed alternative fuel provider. A list must state the name, account number, and business address of each license holder on the list. The Secretary must send an annual update of a list to each license holder, as appropriate."

SECTION 61. G.S. 119-15 reads as rewritten:

"**§ 119-15. Definitions that apply to Article.**

The following definitions apply in this Article:

(1) Alternative fuel. – Defined in G.S. 105-449.130.

(2) Aviation gasoline. – Defined in G.S. 105-449.60.

~~(1a)~~(3) Dyed diesel fuel. – Defined in G.S. 105-449.60.

~~(1b)~~(4) Dyed diesel fuel distributor. – A person who acquires dyed diesel fuel from either of the following:

a. A person who is not required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for dyed diesel fuel to be used for nonhighway purposes.

b. Another dyed diesel fuel distributor.

~~(2)~~(5) Gasoline. – Defined in G.S. 105-449.60.

(6) Jet fuel. – Defined in G.S. 105-449.60.

~~(3)~~(7) Kerosene. – Defined in G.S. 105-449.60. ~~Petroleum oil that is free from water, glue, and suspended matter and that meets the specifications and standards adopted by the Gasoline and Oil Inspection Board.~~

~~(3a)~~(8) Kerosene distributor. –A person who acquires kerosene from any of the following for subsequent sale:

a. A supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.

b. A kerosene supplier.

c. Another kerosene distributor.

~~(3b)~~(9) Kerosene supplier. – Either of the following:

a. A person who supplies both kerosene and motor fuel and, consequently, is required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.

b. A person who is not required to be licensed as a supplier under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for kerosene to be used to fuel an airplane.

~~(4)~~(10) Motor fuel. – Defined in G.S. 105-449.60.

~~(5)~~(11) Person. – Defined in G.S. 105-229.90.

~~(6)~~(12) Terminal. – Defined in G.S. 105-449.60.

~~(7)~~(13) Terminal operator. – Defined in G.S. 105-449.60."

SECTION 62. G.S. 119-18(a) reads as rewritten:

"(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the fuel listed in this ~~subsection~~ Article regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report is due on the same date as a monthly return due under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of G.S. 105-449.90.

~~(1) Motor fuel.~~

~~(2) Alternative fuel used to operate a highway vehicle.~~

~~(3) Kerosene.~~"

EFFECTIVE DATE

SECTION 63. Sections 20-62 are effective January 1, 2009. Except as otherwise provided, the remainder of this act is effective when it becomes law.

BILL ANALYSIS

Draft 2007-SVx-23: Revenue Laws Technical, Clarifying, & Administrative Changes

Committee:	Revenue Laws Study Committee	**Date:**	May 7, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:	2007-SVz-23		Committee Counsel

SUMMARY: This legislative proposal makes several technical, clarifying, and administrative changes to the revenue laws and related statutes.

BILL ANALYSIS: This draft proposal makes the following technical, clarifying, and administrative changes:

Section	Explanation
911 Technical Changes	
1.(a)	Allows the 911 Board to adjust allocations to ensure local governments receive, at minimum, the same revenues the local government collected in 911 fees for the fiscal year ending June 30, 2007.
1.(b)	Changes from calendar year to fiscal year, the time frame in which the Board can make changes in allocation percentages to conform to the Board's accounting practices.
1.(c)	Clarifies that the Eastern Band of the Cherokee Nation can receive disbursements from the 911 Fund, even though the Nation is exempt from Chapter 159, the Local Government Finance Act.
Work Opportunity Tax Credit Changes	
2.(a)	Clarifies that the credit is limited to 6% of the Federal credit for wages paid in the same taxable year for positions located in North Carolina. Adds a sunset on the credit for taxable years beginning on or after January 1, 2012.
2.(b)	Clarifies that corporations cannot take an additional deduction under G.S. 105-130.5(b)(11) if this credit is taken.
3.(c)	Clarifies that individuals cannot take an additional deduction under G.S. 105-134.6(d)(2) if this credit is taken.
Reform Tax Appeals Changes	
3	Section 10 of SB 242 (S.L. 2007-491) extended by one month the due date for filing a franchise tax return. Section 14 of that act made a corresponding change for corporate income tax returns. Since franchise tax and corporate income tax are reported on the same form, the effective dates must conform. However, the way the act was drafted, the one-month extension for franchise tax would occur in 2008 while the one-month extension for corporate income would take place in 2009. Section 1 of this proposal corrects the inconsistency by repealing Section 10 of SB 242, effective retroactively to January 1, 2008, and by reenacting the provision, effective January 1, 2009. With this change, the one-month extension will take effect for both taxes beginning in 2009. Section 10 of SB 242 also rewrote for clarity the subsection imposing the franchise tax. The rewrite inadvertently omitted existing language requiring a corporation to determine

	its tax liability based on "the books and records of the corporation at the close of the income year." Section 1 puts this language back in the statute.
4	Section 10 of SB 242 added chief financial officers to the list of corporate officers authorized to sign franchise tax returns and deleted the secretary, the assistant secretary, and the assistant treasurer. However, similar changes were not made in the corresponding corporate income tax statute. Since the franchise tax return and the corporate income tax return are on the same form, the statutes need to match. This section makes that conforming change.
5	Under the new administrative review process, the Department is required to take action on a request for a refund within six months after the request has been filed. If the Department denies the request, it must send a notice to the taxpayer, and the taxpayer has 45 days to request a review of the proposed denial. However, if the Department fails to take any action within six months, the request is considered denied, and the taxpayer has 45 days from that point to request review. The purpose of this provision is to allow the taxpayer to move forward in the administrative review process despite inaction by the Department. However, concerns have been raised that the running of this 45-day period without actual notice from the Department may create a potential trap that bars taxpayers from appealing the denial. Section 3.(a) provides that a taxpayer may file a request for review at any time after inaction by the Department is considered a proposed denial of the refund but within 45 days of receiving actual notice of a proposed denial by the Department. This change was requested by the Department.
6	The Department must issue a final determination within nine months after the taxpayer requests a review of a proposed denial of a refund or a proposed assessment of tax. The relevant statute specifically provides that failure to timely issue a notice of final determination does not affect the validity of a proposed assessment but is silent as to the impact on a proposed denial of refund. This section would clarify that the validity of a proposed denial of refund is not affected by failure to timely issue a notice of final determination.
7	This section replaces the word "tax," which is a defined term, with the word "amount" for consistency.
8	This is a conforming change in the motor fuel tax law regarding the new administrative review process.
9	SB 242 made special provisions for contested tax cases heard at the Office of Administrative Hearings. Among them, a law enforcement report may be admitted into evidence without the testimony of personnel from the law enforcement agency. The Motor Fuels Tax Division of the Department has requested that government agency lab reports used in the enforcement of the motor fuel tax laws also be admitted without requiring agency personnel testimony.
Collection Changes	
10	Individual officers and directors of a corporation are usually not liable for corporate debts or obligations. This is in contrast to partnership debts and liabilities, which are chargeable personally to the individual partners. However, by statute, a "responsible officer" of a corporation or a limited liability company may be held personally liable for certain unpaid trust taxes owed by the business entity. These taxes include sales and use, motor fuels, and income withholding taxes. A "responsible officer" is defined as the president, treasurer, and the CFO of a corporation, the manager of a LLC, and any other officer of a corporation or a member of a LLC who has a duty to pay taxes on behalf of

	the entity. The Department is authorized to enforce collection by proposing an assessment against the officer. There is no similar statutory authorization to assess partners for these taxes. Instead, the Department, like any other creditor of a partnership, must sue in order to collect this liability. Once a judgment is obtained, the Department may seek to execute the judgment. The Department has requested that partners and managers of a partnership (who may or may not be a partner) be added to the list of officers or, as rewritten, "responsible persons" whom the Department may assess. This section also rewrites the section for clarity and style and places the statute in a more logical location within the Article.
Sales Tax Changes	
11	This section is a transitional provision for the "Medicaid swap" enacted in the 2007 Session by S.L. 2007-323. Under the swap, the local sales and use tax rate decreases by ¼ cent in 2008-09 and again in 2009-10, and the State sales and use tax rate increases by the same amount. The combined State and local rates do not change; instead, the allocation of the combined rate between the State and the counties changes. The question arises of how to report tax on gross receipts from periodic payments made pursuant to agreements entered into before the effective date of the rate changes. This section specifies how the tax on those receipts is to be reported. Periodic payments consist of lease and rental payments and installment sale payments. Sales and use tax is due on lease and rental payments when the payments are billed. For installment sales, the tax application differs depending on whether the retailer reports on an accrual basis or a cash basis. A retailer on an accrual basis reports all the sales tax due on an installment sale when the sale is made. A retailer on a cash basis reports sales tax when each installment payment is received. This provision requires retailers who receive periodic payments from existing contracts to report them at the current State and local rates. This eliminates confusion about what to report and how to report it. Without this provision, a retailer who receives periodic payments will have receipts from existing contracts that are reportable at State and local rates that differ from the State and local rates that apply to periodic payments from new contracts.
Occupancy Tax Changes	
12.(a)	As the result of an independent audit by at least one county, questions have arisen among local governments and within the tourism industry regarding what constitutes "gross receipts" for occupancy tax purposes. Most local occupancy tax acts state that a county or city may levy a room occupancy tax on "the gross receipts derived from the rental of any room…that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3)." Therefore, if an item of tangible personal property or a fee associated with the rental of an accommodation is subject to sales tax under G.S. 105-164.4(a)(3), then it is also subject to the local occupancy tax. While the Department can offer an interpretation of the State sales tax laws, it does not have statutory authority to offer an interpretation of the application of local occupancy tax laws, which it does not administer. This section provides that an interpretation by the Department of a State sales tax law applies to a local law that refers to the State sales tax law for its application.
12.(b) & (c)	In January of 2008, the Department issued a technical bulletin related to the rentals of accommodations. In that bulletin, the Department clarified that the bundling provisions

	in G.S. 105-164.4D apply to vacation packages. For example, a vacation package may include lodging, meals, and greens fees for one price. The lodging would be subject to sales and local occupancy tax, the meals would be subject only to sales tax, and the greens fees would not be subject to either sales or occupancy tax. The bundling provisions allow a hotel operator to allocate the revenues between taxable and exempt portions of the package. The allocation may be part of a hotel's internal records and is not required to appear on the customer's bill. A "bundled transaction" is defined as a sale that includes at least one taxable item and at least one exempt item. Since the release of the bulletin, the tourism industry has sought clarification of whether the allocation rules apply to vacation packages consisting only of taxable items, since those packages do not otherwise meet the definition of a bundled transaction. The clarification is needed because although the entire vacation package may be subject to *sales* tax, not all items may be subject to *occupancy* tax. The collectors would like the ability to allocate those revenues. This section provides that collectors of occupancy tax may allocate revenues for vacation packages that do not otherwise meet the definition of a bundled transaction.
Medicaid Technical Changes	
13	This section makes two changes. The first change is in G.S. 105-522(a)(2), which is set out in subsection (a) of the section. It is a technical change that describes the hold harmless calculation in a simpler way that does not require a reference to local sales taxes on food. The change in the description does not change the amount of the hold harmless. The local sales taxes on food are administered as if they were State taxes and are included, in part, in the amount distributed under Article 40 but are not part of the amount allocated under G.S. 105-486. The second change, made in the rest of the section, eliminates a potentially circular calculation of the amount of local sales and use tax revenue to be distributed. It does not change the amount of any tax or hold harmless payment. Currently, the law could be construed to calculate the amount of various hold harmless payments on the basis of an amount that includes a deduction for the payment that is attempted to be calculated, which is circular. The hold harmless payments are now both pegged, in part, on amounts distributed under Article 39 of Chapter 105 of the General Statutes and deducted from those amounts. Section 1 resolves this problem by making it clear that the hold harmless payments are calculated on the basis of amounts allocated for distribution before any subtraction for the hold harmless payments. References in Article 39 and Chapter 1096 of the 1967 Session Laws are replaced with a direction in G.S. 105-522(b) to deduct the city hold harmless payment from the amount of local sales and use tax revenue otherwise allocated under those provisions for distribution to a county. Subsection (a) adds an instruction in G.S. 105-522(b) to deduct the payment. Subsection (b) removes the instruction from Article 39 of Chapter 105. Subsection (c) removes the instruction from Chapter 1096.
14	This section makes three changes. First, it inserts the city hold harmless amount into the calculation of the county hold harmless payment, thereby ensuring that the intent of the General Assembly is fulfilled. G.S. 105-523(a) states that each county is to benefit from the “Medicaid swap” by at least $500,000. The current calculation for determining a county’s hold harmless payment, however, does not include the amount a county is required to give to its cities in order to hold them harmless from the repealed local sales taxes. Subsection (a) adds the cost of the city hold harmless to the calculation of the county hold harmless payment. Subsections (d) and (f) repeal changes to G.S. 105-523

	that were to take effect in 2009, and subsection (h) reinserts those same changes into the amended G.S. 105-523 while preserving the amendments added by subsection (a). Second, it makes the same technical change to G.S. 105-523(b)(3) that Section 1 makes to G.S. 105-522(a)(2). The technical change describes the hold harmless calculation in a simpler way that does not require a reference to local sales taxes on food. The change in the description does not change the amount of the hold harmless. The local sales taxes on food are administered as if they were State taxes and are included, in part, in the amount distributed under Article 40 but are not part of the amount allocated under G.S. 105-486. Third, it changes the city hold harmless formula and the county hold harmless formula that apply to fiscal years beginning in 2009-2010 to match these formulas to the ones used in the tables that calculated the impact of the swap. The current law incorrectly includes a ¼% tax distributed on the basis of point of origin as one of the elements of the formulas. The "Medicaid swap" is based on the repeal of ½% local sales and use taxes distributed on a per capita basis and the conversion of a ¼% per capita tax to a ¼% point of origin tax. To reflect this, the current reimbursement formula needs to be changed to delete the reference to a ¼% point of origin tax and replace it with a ¼% per capita tax. Subsections (c), (d), and (f) of this section repeal the provisions that contain the incorrect reference and subsections (g) and (h) insert the correct reference in the formulas. Subsections (b), (e), and (i) make conforming changes; they repeal sections that use terminology that does not match the revised reimbursement sections and replace them with a provision that uses terminology that is consistent with the revised sections.
Other Changes	
15	Currently, information obtained under Article 2D (Unauthorized Substance Taxes) is confidential and may not be disclosed, unless the disclosure is made to exchange information with certain law enforcement agencies concerning a tax imposed by the Article. The information may also not be used in a criminal prosecution, other than for a prosecution for a violation of the Article or unless the information is independently obtained. Section 8 would allow an unauthorized substance tax officer to testify in court concerning an offense committed against that individual in the course of administering the Article. The Department has requested this change due to a specific incident involving an officer who was assaulted but was prohibited from testifying about the incident.
16	This section would repeal the North Carolina Rural Redevelopment Authority (NCRRA). The NCRRA is an inactive entity. It was created by S.L. 2000-148 but was never appointed or funded. Creation of the Authority was a recommendation of the 1999 North Carolina Rural Prosperity Task Force, which was established by Governor Jim Hunt and chaired by Erskine Bowles. As envisioned by the Task Force, the Authority would administer a revolving loan fund, the Rural Investment Fund, as well as an investment fund, the Long-Term Rural Development Fund. No money was ever appropriated to these funds. Subsection (a) repeals the statutes that create the Authority and set out its duties. Subsections (b) through (e) make conforming changes. Specifically, subsection (b) repeals the Authority's exemption from the general prohibition against a State agency competing with private enterprise. Subsection (c) deletes the Authority from the list of boards and commissions on which legislators may not serve. Subsection (d) repeals the Authority's exemption from the State Personnel Act. Subsection (e) changes a cross-

	reference to a definition of “regional partnership” that is now set out in a statute that is repealed in subsection (a); it replaces the cross-reference with the substance of the definition and updates the definition to reflect the accurate names of the regional economic development partnerships. The Department of Commerce has no objections to this provision.
17-19	These sections make other technical changes.
Motor Fuel Tax Law Changes	
20	Makes clarifying and conforming changes and numbers the definitions sequentially. Adds the definition of words commonly used, such as 'International Fuel Tax Agreement' and 'qualified motor vehicle'. Under IFTA, a 'qualified motor vehicle' is one used, designed, or maintained for transportation of persons or property that meets one or more of the following conditions: has two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds; has three or more axles regardless of weight; or has a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds when it is combined with another vehicle.
21	Corrects a punctuation error.
22	Changes the statute to reflect current practice. Provides that the Department may include information received from the State Highway Patrol when determining the potential liability of a motor carrier. The SHP used to be located within the DMV. Incorporates the definition of defined terms.
23	Incorporates the definition of defined terms. Clarifies that recreational vehicles that are qualified motor vehicles under the IFTA would need to be registered. Also, the use of the defined term 'qualified motor vehicle' means that special mobile equipment would need to be registered. Although the current law's definition of 'motor vehicle' arguably includes special mobile equipment, the Department has not been requiring the registration of special mobile equipment. However, other IFTA states do require the registration of special mobile equipment.
24	Incorporates the commonly used term 'decal' for 'identification marker'.
25	Repeals an unnecessary statute. G.S. 105-252 and G.S. 105-254 give the Secretary the authority to prepare the appropriate forms and require the necessary information on those forms.
26	Incorporates the commonly used term 'decal' for 'identification marker'. Modernizes the language.
27	Incorporates the commonly used term 'decal' for 'identification marker'.
28	Revises the definitional statute to add definitions of commonly used terms, to incorporate definitions from other statutes, and to refer to federal regulations. It numbers the definitions sequentially.
29	Clarifying change; it identifies all license types that transport motor fuel. It also restricts a supplier from transferring fuel to a marine vessel unless the receiver of the fuel is licensed as a supplier. There is currently little control over who can bring a ship or barge to the North Carolina coastline and load fuel.
30	Conforming and grammatical change. It removes definitions that have been incorporated into the definitional statute and it corrects the spelling of the term 'bulk end-user'.
31	Corrects the spelling of the term 'bulk end-user'.
32	Conforming change. It incorporates the defined term 'supplier'.
33	Conforming change. It incorporates the defined term 'in-State supplier'.
34	Conforming change. Provides that an importer's license must indicate the category of the importer, just like a supplier's license must indicate the category of the supplier.
35	Clarifying change. It identifies the payment responsibilities of all license holders.

36	It identifies the point of taxation for fuel that is not taxed by the Code by adding a new subdivision (6). It provides that fuel grade ethanol would be taxed at the rack.
37	Provides that the supplier who sold motor fuel to an unlicensed exporter is jointly and severally liable for the tax imposed on that fuel. The statute provides similar joint and several liability for motor fuel sold to an unlicensed distributor; for motor fuel sold by an unlicensed supplier; and for dyed diesel fuel.
38	Conforming change. (See section 17)
39	Corrects a grammatical error.
40	Corrects the spelling of the term 'bulk end-user'.
41	Corrects the spelling of the term 'bulk end-user' and 'end-seller'.
42	Corrects the spelling of the term 'bulk end-user'.
43	It identifies the tax responsibility of purchasers to the supplier.
44	It removes the requirement to sort the fuel by type on the reporting form; the requirement is not longer necessary due to electronic filing – it provides the Department with the ability to sort.
45	Corrects the spelling of the term 'bulk end-user'.
46	Conforming change to administrative practice. It provides that terminal operators who are required to be licensed in this State must report transactions from out-of-state terminals with this State as its destination. It also changes the structure of the statute for uniformity purposes.
47	Conforming change. It changes the structure of the statute for uniformity purposes.
48	Clarifying change. It changes the catchline of the statute to more accurately reflect the contents of the statute. It specifies that the refunds are monthly refunds; this change reflects current practice. It also provides that an out-of-state bulk end-user must be registered as an exporter if requesting a refund for exports from a North Carolina bulk plant.
49	Specifies that the refund is a monthly refund; this change reflects current practice.
50	Corrects the spelling of the term 'end-user'.
51	Deletes the provisions for refunds filed upon application because all refunds are filed on an annual basis, a quarterly basis, or a monthly basis.
52	Clarifies the content of the shipping document.
53	Conforming change to administrative practice and terminology.
54	Uses the defined term 'person'; that term incorporates a distributor.
55	Corrects the spelling of the term 'bulk end-user'. Cross-references the definition of highway to the defined term in the definitional statute.
56-60	Corrects the spelling of the term 'bulk end-user'.
61	Conforming change. It cross references the defined terms in the definitional statute and renumbers the subdivisions sequentially.
62	Provides that the inspection tax is imposed on the fuel listed in the Article. This change reflects administrative practice.

LEGISLATIVE PROPOSAL #9

TAX ON SHORT-TERM HEAVY EQUIPMENT RENTALS

LEGISLATIVE PROPOSAL #9

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO RESOLVE PROBLEMS WITH APPLYING PROPERTY TAX TO HEAVY EQUIPMENT RENTED ON A SHORT-TERM BASIS BY REPLACING THE PROPERTY TAX ON THIS EQUIPMENT WITH A TAX ON THE GROSS RECEIPTS FROM RENTING THE EQUIPMENT.

SHORT TITLE: Tax on Short-term Heavy Equipment Rentals.

SPONSORS:

BRIEF OVERVIEW: The proposal repeals the property tax on heavy equipment owned and offered for short-term rental or lease by a person whose principal business is the short-term lease or rental of heavy equipment at retail.

FISCAL IMPACT:

EFFECTIVE DATE: A tax imposed under this act becomes effective on the date set out in the resolution imposing the tax. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the resolution is adopted.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U **D**

BILL DRAFT 2007-LAz-21 [v.8] (4/29)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/12/2008 2:01:08 PM

Short Title:	Tax on Short-term Heavy Equipment Rentals.	(Public)
Sponsors:	.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO RESOLVE PROBLEMS WITH APPLYING PROPERTY TAX TO HEAVY EQUIPMENT RENTED ON A SHORT-TERM BASIS BY REPLACING THE PROPERTY TAX ON THIS EQUIPMENT WITH A TAX ON THE GROSS RECEIPTS FROM RENTING THE EQUIPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-275 is amended by adding a new subdivision to read:

"**§ 105-275. Property classified and excluded from the tax base.**

The following classes of property are hereby designated special classes under authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be listed, appraised, assessed, or taxed:

…

(42a) Heavy equipment subject to a gross receipts tax under G.S. 153A-156.1 and G.S. 160A-215.2 "

SECTION 2. Article 7 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-156.1. Heavy equipment gross receipts tax in lieu of property tax.**

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

(1) Heavy equipment. – Earthmoving or construction equipment that meets any of the following requirements:

a. It is a self-propelled vehicle that is not designed to be driven on a highway.

b. It is industrial lift equipment, industrial material handling equipment, industrial electrical generation equipment, or a similar piece of industrial equipment.

c. It is an attachment or an accessory for a vehicle or a piece of equipment described in this subdivision.

(2) Short-term lease or rental. – Defined in G.S. 105-187.1.

(b) A county may, by resolution, impose a tax at the rate of one and one-tenth percent (1.1%) on the gross receipts from the short-term lease or rental of heavy equipment by a person whose principal business is the short-term lease or rental of heavy equipment at retail. The heavy equipment subject to this tax is exempt from property tax under G.S. 105-275, and this tax provides an alternative to the property tax on equipment.

(c) Administration. – Except as provided in this section, a county that imposes a tax under this section must administer the tax in the same manner as a tax imposed under G.S. 105-164.4(a)(2). The gross receipts from the short-term lease or rental of heavy equipment are subject to a tax under this section if the place of business from which the heavy equipment is leased or rented is located in the county. The penalties and collection remedies that apply to the payment of sales and use taxes under Article 5 of Chapter 105 of the General Statutes apply to this tax. The county finance officer has the same authority as the Secretary of Revenue in imposing these penalties and remedies.

(d) Payment. – A person whose principal business is the short-term lease or rental of heavy equipment is required to remit a tax imposed by this section to the county finance officer. The tax is payable quarterly and is due by the last day of the month following the end of the quarter. The tax is intended to be added to the amount charged for the short-term lease or rental of heavy equipment and paid to the heavy equipment business by the person to whom the heavy equipment is leased or rented.

(e) Effective Date. – A tax imposed under this section becomes effective on the date set in the resolution imposing the tax. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the resolution is adopted.

(f) Repeal. – A county may, by resolution, repeal a tax imposed under this section. The repeal is effective on the date set in the resolution. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the resolution is adopted."

SECTION 3. Article 9 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-215.2. – Heavy equipment gross receipts tax in lieu of property tax.**

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

(1) Heavy equipment. – Earthmoving or construction equipment that meets any of the following requirements:

a. It is a self-propelled vehicle that is not designed to be driven on a highway.

b. It is industrial lift equipment, industrial material handling equipment, industrial electrical generation equipment, or a similar piece of industrial equipment.

c. It is an attachment or an accessory for a vehicle or a piece of equipment described in this subdivision.

(2) Short-term lease or rental. – Defined in G.S. 105-187.1.

(b) A city may, by resolution impose a tax at the rate of sixty-five hundredths percent (0.65%) on the gross receipts from the short-term lease or rental of heavy equipment by a person whose principal business is the short-term lease or rental of heavy equipment at retail. The heavy equipment subject to this tax is exempt from property tax under G.S. 105-275, and this tax provides an alternative to a property tax on the equipment.

(c) Administration. - Except as provided in this section, a city that imposes a tax under this section must administer the tax in the same manner as a tax imposed under G.S. 105-164.4(a)(2). The gross receipts from the short-term lease or rental of heavy equipment are subject to a tax under this section if the place of business from which the heavy equipment is leased or rented is located in the city. The penalties and collection remedies that apply to the payment of sales and use taxes under Article 5 of Chapter 105 of the General Statutes apply to this tax. The city finance officer has the same authority as the Secretary of Revenue in imposing these penalties and remedies.

(d) Payment. – A person whose principal business is the short-term lease or rental of heavy equipment is required to remit a tax imposed by this section to the city finance officer. The tax is payable quarterly and is due by the last day of the month following the end of the quarter. The tax is intended to be added to the amount charged for the short-term lease or rental of heavy equipment and paid to the heavy equipment business by the person to whom the heavy equipment is leased or rented.

(e) Effective Date. – A tax imposed under this section becomes effective on the date set in the resolution imposing the tax. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the resolution is adopted.

(f) Repeal. – A city may, by resolution, repeal a tax imposed under this section. The repeal is effective on the date set in the resolution. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the resolution is adopted."

SECTION 4. G.S. 105-259(b)(5) reads as rewritten:

"**§ 105-259. Secrecy required of officials; penalty for violation.**

(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:

…

(5) To furnish to the chair of a board of county commissioners or the tax collector of a county information on the county sales and use tax."

SECTION 5. Section 1 of this act is effective for taxes imposed for tax years beginning on or after July 1, 2009. The remainder of this act is effective when it becomes law. A tax imposed under G.S. 153A-156.1 or G.S. 160A-215.2, as enacted by this act, may not become effective before January 1, 2009.

BILL ANALYSIS

DRAFT 2007-LAz-21: Tax on Short-term Heavy Equipment Rentals.

Committee:	Revenue Laws	**Date:**	May 6, 2008
Introduced by:		**Summary by:**	Martha Walston
Version:			Committee Counsel

SUMMARY: The draft repeals the property tax on heavy equipment owned and offered for short-term rental or lease by a person whose principal business is the short-term lease or rental of heavy equipment at retail, and enacts in its place local option county and city gross receipts taxes on the short-term heavy equipment rentals.

CURRENT LAW: A business that rents out heavy equipment such as earthmoving and lifting equipment must pay property tax on the equipment. Like other personal property, the value of the heavy equipment is determined as of January 1 each year and is subject to property tax in the county or city in which the equipment is located on that date. Some owners of heavy equipment rental businesses have expressed the following concerns about the unfairness and administrative inconsistencies of levying and collecting property tax on this heavy equipment:

- Some businesses do not know the location of their heavy equipment on January 1.
- Some businesses, whose heavy equipment is not rented on January 1, move the equipment to a county with a lower property tax rate in order to pay lower property taxes.
- Some businesses erroneously claim their heavy equipment as inventory held for sale, and therefore, not subject to property taxes.

During the 2007 Session, House Bill 1895 was introduced in an attempt to alleviate some of these concerns and to provide a more level "playing field" for companies that rent out heavy equipment. HB 1895 was supported by several large companies whose principal business is the rental and leasing of heavy equipment. HB 1895, as introduced, authorized counties and cities to levy a privilege tax on certain businesses that rent out heavy equipment in lieu of paying property tax on the heavy equipment.[1] Under that version, the rate of the privilege tax could not exceed .0.75% and was applied to the gross receipts from the heavy equipment rentals. HB 1895 was given a favorable report in the House Committee on Commerce, Small Business and Entrepreneurship and re-referred to House Finance. During the final full week of the Session, the House Finance Committee gave a favorable report to an amended version of the bill that deleted all provisions of the first edition and replaced it with language authorizing the Revenue Laws Study Committee to study the issue of whether to impose a gross receipts tax on heavy equipment property rentals in lieu of a property tax on the equipment.

BILL ANALYSIS: The draft would exclude from property tax certain heavy equipment that is offered at retail for short-term lease or rental, if the heavy equipment is leased or rented out by a person whose principal business is the short-term[2] lease or rental of heavy equipment. The draft replaces the property

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[1] The businesses that were subject to the tax are businesses engaged in renting construction, mining, forestry, commercial and industrial equipment as defined in the North American Industry Classification System(NAICS) adopted by the US Office of Management and Budget.

[2] A short-term lease is a lease or rental for a period of less than 365 days. (G.S. 105-187.1). Under current law, a long-term lease agreement generally requires the lessee to list and pay the property taxes due on the heavy equipment.

tax on the heavy equipment with a local option gross receipts tax. This draft is similar to the legislation enacted in 2000 that repealed the property tax on vehicles owned and offered for short-term rental by persons engaged in the business of renting vehicles to the public and replaced the property tax with a local option county and city gross receipts tax on short-term vehicles. (G.S. 153A-156 and G.S. 160A-215.1)

What type of heavy equipment is subject to the tax?

The tax applies to the gross receipts from the short-term rental or lease of the following heavy equipment:

- Earthmoving or construction equipment that meets any of the following requirements:
  a. It is a self-propelled vehicle that is not designed to be driven on a highway.
  b. It is industrial lift equipment, industrial material handling equipment, industrial electrical generation equipment, or similar piece of industrial equipment.
  c. It is an attachment or an accessory for a vehicle or piece of equipment described in a. or b.

What is the rate to be applied to the gross receipts from the short-term lease or rental of heavy equipment?

- The rate for the counties will be 1.1% and the rate for the cities will be 0.65% for a combined rate of 1.75% if the heavy equipment rental business is located in a city.

How and when will the gross receipts tax be paid?

- The gross receipts tax will be paid quarterly and will be due on the last day of the month following the end of the quarter. The tax is paid to the city finance officer and the county tax collector in the county or city in which the business renting or leasing the equipment is located. The tax is intended to be added to the amount charged for the rental and paid to the heavy equipment business by the lessee.

How will the gross receipts tax be administered?

- The tax will be administered in the same manner as leased or rented personal property under the sales and use tax statutes. The equipment will be taxed by the city and county in which the business renting or leasing the equipment is located.

EFFECTIVE DATE: A tax imposed under this act becomes effective on the date set out in the resolution imposing the tax. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the resolution is adopted.

OTHER STATES: Virginia authorizes a county or city to levy a tax not to exceed 1% on the gross proceeds from a short term rental business. Short-term rental means ninety-two consecutive days or less. The tax is collected from the lessee of the rental property and the lessor must submit a quarterly return. (G.S. 58.1-3510.1(B)). Colorado also authorizes counties to impose a tax not to exceed 1% on the rental of personal property for 30 days or less (G.S. 30-11-107.7). South Carolina imposes a 3% surcharge on a heavy equipment rental contract for a period of thirty-one days or less. The surcharge is computed on the total amount stated in the rental contract and is used by the rental company for reimbursement of the amount of personal property taxes paid on the equipment.

2007-LAz-21-SMLA

LEGISLATIVE PROPOSAL #10

EXTEND R & D CREDIT

LEGISLATIVE PROPOSAL #10

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO EXTEND THE SUNSET ON THE CREDIT FOR RESEARCH AND DEVELOPMENT.

SHORT TITLE: Extend R & D Credit.

SPONSORS:

BRIEF OVERVIEW: The proposal would extend for five years, until the year 2014, the tax credit for research and development.

FISCAL IMPACT:

EFFECTIVE DATE: This act would become effective when it becomes law.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U **D**

BILL DRAFT 2007-SVz-26 [v.1] (05/07)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/9/2008 3:47:13 PM

Short Title:	Extend R&D Credit.	(Public)
Sponsors:	.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET ON THE CREDIT FOR RESEARCH AND DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.51(b) reads as rewritten:

"(b) This Article is repealed for taxable years beginning on or after January 1, ~~2009.~~2014."

SECTION 2. This act is effective when it becomes law.

DRAFT 2007-SVz-26: Extend R&D Credit

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	May 9, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:	Bill Draft		Committee Counsel

***SUMMARY:* This proposal would extend for five years, until the year 2014, the tax credit for research and development.**

CURRENT LAW: In 2004, the General Assembly enacted a new research and development tax credit as an alternative to the Bill Lee research and development credit, which was set to expire along with the entire Bill Lee Act as of January 1, 2006.

Eligibility. **–** Effective for expenses on or after May 1, 2005, a taxpayer that has qualified North Carolina research expenses or North Carolina University research expenses is allowed a credit. The taxpayer must satisfy Bill Lee Act requirements related to employee wages, the provision of health insurance, the taxpayer's Occupational Safety and Health Act record, and the taxpayer's environmental record. The taxpayer is not required to have no overdue tax debts.

Credit Amount. – For North Carolina university research expenses, the credit amount is equal to 20% of the amount the taxpayer paid to the university for the research and development. For all other qualified research expenses, the credit is equal to a percentage of the expenses as follows:

- For small businesses[1], the rate is 3.25%.
- For research and development conducted in a development tier one area, the rate is 3.25%.
- For other research and development expenditures, the rate ranges from 1.25% to 3.25% as the amount of those expenditures increases.

Sunset. – The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2009.

BILL ANALYSIS: This proposal would extend for five years, until the year 2014, the sunset on this tax credit.

EFFECTIVE DATE: This act would be effective when it becomes law.

BACKGROUND: Tax credits are considered a mechanism for encouraging and rewarding behavior that is beneficial to the State. Like appropriations, tax credits are expenditures of public funds for the benefit of certain businesses, interest groups, and other taxpayers. However, unlike appropriations, without some limitation, they can continue in perpetuity costing the State millions of dollars without review by the General Assembly. It was for this reason that in 1998, the Revenue Laws Study Committee recommended that sunsets be placed on virtually all of the tax credits as a means to review

[1] A small business is a business whose annual receipts, combined with the annual receipts of all related persons, does not exceed $1,000,000.

and reevaluate those credits. The thought was that periodic review would allow the General Assembly to consider each credit on its merits to determine whether it continues to serve a public purpose that justifies its cost.   *2007SVz-26*

GENERAL ASSEMBLY OF NORTH CAROLINA

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. <u>This is not an official fiscal note</u>. 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 14, 2008

TO: Revenue Laws Study Committee

FROM: Barry Boardman
Fiscal Research Division

RE: 2007-SVz-26

FISCAL IMPACT

	Yes ( )	No ( )	No Estimate Available ( )		
	FY 2008-09	**FY 2009-10**	**FY 2010-11**	**FY 2011-12**	**FY 2012-13**
REVENUES ($ millions):					
R & D credit	**(1.0)**	**(2.1)**	**(2.3)**	**(2.5)**	**(2.6)**
EXPENDITURES:					
POSITIONS (cumulative):					

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

EFFECTIVE DATE: This act would be effective when it becomes law.

BILL SUMMARY: This proposal extends for five years the following the tax credit for research and development due to expire January 1, 2009:

Credit for Research and Development

In 2004, the General Assembly enacted a new research and development tax credit as an alternative to the Bill Lee research and development credit, which was set to expire along with the entire Bill Lee Act as of January 1, 2006.

Eligibility. **–** Effective for expenses on or after May 1, 2005, a taxpayer that has qualified North Carolina research expenses or North Carolina University research expenses is allowed a credit. The taxpayer must satisfy Bill Lee Act requirements related to employee wages, the provision of health insurance, the taxpayer's Occupational Safety and Health Act record, and the taxpayer's environmental record. The taxpayer is not required to have no overdue tax debts.

Credit Amount. – For North Carolina university research expenses, the credit amount is equal to 20% of the amount the taxpayer paid to the university for the research and development. For all other qualified research expenses, the credit is equal to a percentage of the expenses as follows:

- For small businesses[1], the rate is 3.25%.
- For research and development conducted in a development tier one area, the rate is 3.25%.
- For other research and development expenditures, the rate ranges from 1.25% to 3.25% as the amount of those expenditures increases.

Sunset. – The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2009. This bill would extend the tax credit for five years, until January 1, 2014.

ASSUMPTIONS AND METHODOLOGY: The methodology used to estimate the fiscal impact of extending the tax credits through 2013 was to examine the level of credits currently taken and estimate future growth based on current trends in the credit combined with a forecast of economy-based growth. Since this credit is relatively new and has seen only modest use since its inception in 2005. it is expected to grow modestly over the next several years.. With recent enhancements to the credit and a noticeable increase in credits taken, the credits could reach $2 million for FY 2008-09 and future growth is anticipated at nearly 7 percent per year. Because tax credits are typically taken based on tax years, which do not coincide with the State’s fiscal year, FY 2008-09 losses are represent a partial year’s credits.

SOURCES OF DATA: Department of Revenue, Moody’s economy.com

TECHNICAL CONSIDERATIONS: None

[1] A small business is a business whose annual receipts, combined with the annual receipts of all related persons, does not exceed $1,000,000.

LEGISLATIVE PROPOSAL #11

EXTEND STATE PORTS TAX CREDIT

LEGISLATIVE PROPOSAL #11

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO EXTEND THE SUNSET ON THE CREDIT FOR THE NORTH CAROLINA STATE PORTS AUTHORITY.

SHORT TITLE: Extend State Ports Tax Credit.

SPONSORS:

BRIEF OVERVIEW: The proposal would extend for five years, until the year 2014, the tax credit for the North Carolina State Ports Authority.

FISCAL IMPACT:

EFFECTIVE DATE: This act would become effective when it becomes law.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U **D**

BILL DRAFT 2007-SVz-27 [v.2] (05/07)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/9/2008 3:53:46 PM

Short Title:	Extend State Ports Tax Credit.	(Public)
Sponsors:	.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET ON THE TAX CREDIT FOR THE NORTH CAROLINA STATE PORTS AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.41(d) reads as rewritten:

"(d) Sunset. – This section is repealed effective for taxable years beginning on or after January 1, ~~2009.~~2014."

SECTION 2. G.S. 105-151.22(d) reads as rewritten:

(d) Sunset. – This section is repealed effective for taxable years beginning on or after January 1, ~~2009.~~2014.

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

BILL ANALYSIS

DRAFT 2007-SVz-27: Extend State Ports Tax Credit

Committee:	Revenue Laws Study Committee	**Date:**	May 9, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:	Bill Draft		Committee Counsel

SUMMARY: This proposal would extend for five years, until the year 2014, the tax credit for the North Carolina State Ports Authority.

CURRENT LAW: In 1992, the General Assembly enacted the State Ports tax credit to encourage exporters to use the two State-owned port terminals in Wilmington and Morehead City. At that time, the credit applied to amounts paid by a taxpayer on any cargo exported at either port. Also, when first enacted, this credit was effective for taxable years beginning on or after March 1, 1992, and expired on February 28, 1996. Over the years, the credit has been expanded and the sunset has been extended.

Eligibility. – Currently, the State Ports tax credit is allowed to a taxpayer who loads or unloads waterborne cargo from an ocean carrier at the State-owned port terminal at Wilmington or Morehead City. The credit is allowed against the taxpayer's income tax. The taxpayer may be either an individual or a corporation.

Credit Amount. – The amount of the tax credit is equal to the amount of wharfage, handling, and throughput charges paid to the North Carolina State Ports Authority in the taxable year that exceeds the average amount of charges paid to the Authority for the current tax year and the two previous tax years. The credit is limited to 50% of the tax imposed on the taxpayer for the taxable year. Any excess credit may be carried forward and applied to the taxpayer's income tax liability for the next five years. The maximum cumulative credit that one taxpayer may claim is $2 million.

Definitions. **–** Although not defined by the relevant statutes, the various types of cargo differ as follows:

- <u>Bulk cargo</u> is a type of commodity that is loose and usually stockpiled. Examples of this type of commodity include coal, grain, salt, and wood chips.
- <u>Break-bulk cargo</u> consists of commodities that are packaged and stored on pallets or in cases that must be handled and stacked onto a ship by hand, crane, etc. Break-bulk cargo also includes machinery.
- <u>Container cargo</u> consists of commodities that are packaged in a metal trailer box that can be locked onto a tractor-trailer chassis and then detached and put on a ship without any other handling.

*Sunset***. –** The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2009.

BILL ANALYSIS: This proposal would extend for five years, until the year 2014, the sunset on this tax credit.

EFFECTIVE DATE: This act would be effective when it becomes law.

BACKGROUND: Tax credits are considered a mechanism for encouraging and rewarding behavior that is beneficial to the State. Like appropriations, tax credits are expenditures of public funds for the benefit of certain businesses, interest groups, and other taxpayers. However, unlike appropriations, without some limitation, they can continue in perpetuity costing the State millions of dollars without review by the General Assembly. It was for this reason that in 1998, the Revenue Laws Study Committee recommended that sunsets be placed on virtually all of the tax credits as a means to review and reevaluate those credits. The thought was that periodic review would allow the General Assembly to consider each credit on its merits to determine whether it continues to serve a public purpose that justifies its cost.

2007-SVz-27

GENERAL ASSEMBLY OF NORTH CAROLINA

FISCAL ANALYSIS MEMORANDUM

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DATE: May 14, 2008

TO: Revenue Laws Study Committee

FROM: Barry Boardman
Fiscal Research Division

RE: 2007-SVz-26

FISCAL IMPACT

	Yes ( )	No ( )	No Estimate Available ( )		
	FY 2008-09	**FY 2009-10**	**FY 2010-11**	**FY 2011-12**	**FY 2012-13**
REVENUES ($ millions):					
Ports Credit	**(1.0)**	**(2.0)**	**(2.0)**	**(2.0)**	**(2.0)**
EXPENDITURES:					
POSITIONS (cumulative):					

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

EFFECTIVE DATE: This act would be effective when it becomes law.

BILL SUMMARY: This proposal extends for five years the following tax credit for use of North Carolina's State Ports due to expire January 1, 2009:

State Ports Tax Credit

In 1992, the General Assembly enacted the State Ports tax credit to encourage exporters to use the two State-owned port terminals in Wilmington and Morehead City. When enacted, the credit applied to amounts paid by a taxpayer on any cargo exported at either port. When first enacted, this credit was effective for taxable years beginning on or after March 1, 1992, and ending on or before February 28, 1996. Over the years, the credit has been expanded and the sunset has been extended.

Eligibility. – The State Ports tax credit is allowed to a taxpayer who loads or unloads waterborne cargo from an ocean carrier at the State-owned port terminal at Wilmington or Morehead City. The credit is allowed against the taxpayer's income tax. The taxpayer may be either an individual or a corporation.

Credit Amount. – The amount of the tax credit is equal to the amount of wharfage, handling, and throughput charges paid to the North Carolina State Ports Authority in the taxable year that exceeds the average amount of charges paid to the Authority for the current tax year and the two previous tax years. The credit is limited to 50% of the tax imposed on the taxpayer for the taxable year. Any excess credit may be carried forward and applied to the taxpayer's income tax liability for the next five years. The maximum cumulative credit that one taxpayer may claim is $2 million.

Definitions. – Although not defined by the relevant statutes, the various types of cargo differ as follows:

- Bulk cargo is a type of commodity that is loose and usually stockpiled. Examples of this type of commodity include coal, grain, salt, and wood chips.
- Break-bulk cargo consists of commodities that are packaged and stored on pallets or in cases that must be handled and stacked onto a ship by hand, crane, etc. Break-bulk cargo also includes machinery.
- Container cargo consists of commodities that are packaged in a metal trailer box that can be locked onto a tractor-trailer chassis and then detached and put on a ship without any other handling.

*Sunset***.** – The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2009. This bill would extend the tax credit for five years, through the year 2013.

ASSUMPTIONS AND METHODOLOGY: From FY 1994-95 through FY 2006-07 credits have ranged from $200,000 to $2.2 million. The average over this time period is just under $1 million. Because in any given year the potential credits taken are close to $2 million (which has occurred on 2 occasions), the fiscal estimate reflects this potential level of credits taken.

Because tax credits are typically taken based on tax years, which do not coincide with the State's fiscal year, FY 2008-09 losses represent a partial year's credits.

SOURCES OF DATA: Department of Revenue, Moody's economy.com

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #12

EXTEND SMALL BUSINESS HEALTH BENEFITS CREDIT

LEGISLATIVE PROPOSAL #12

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO EXTEND THE CREDIT FOR SMALL BUSINESS EMPLOYEE HEALTH BENEFITS.

SHORT TITLE: Extend Small Business Health Benefits Credit.

SPONSORS:

BRIEF OVERVIEW: The proposal would extend for five years, until the year 2014, the tax credit for small business employee health benefits.

FISCAL IMPACT:

EFFECTIVE DATE: This act would become effective when it becomes law.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U **D**

BILL DRAFT 2007-SVz-28 [v.1] (05/07)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/9/2008 3:59:37 PM

Short Title:	Extend Small Business Health Benefits Credit.	(Public)
Sponsors:	.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE CREDIT FOR SMALL BUSINESS EMPLOYEE HEALTH BENEFITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.16E(d) reads as rewritten:

"(d) Sunset. – This section expires for taxable years beginning on or after January 1, ~~2009.~~2014."

SECTION 2. This act is effective when it becomes law.

BILL ANALYSIS

DRAFT 2007-SVz-28: Extend Small Business Health Benefits Credit.

Committee:	Revenue Laws Study Committee	**Date:**	May 9, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:	Bill Draft		Committee Counsel

SUMMARY: This proposal would extend for five years, until the year 2014, the tax credit for small business employee health benefits.

CURRENT LAW:

Eligibility. – Effective for taxable years beginning on or after January 1, 2007, a small business that provides health benefits to all of its full-time employees is eligible for a tax credit. Under the Internal Revenue Code, an employer may deduct premiums paid for health insurance cost of its employees as a business expense. The credit is in addition to any expense deduction the taxpayer claimed on its income tax return for the health insurance costs.

Credit Amount. **–** The credit amount is equal to $250 per employee for whom the taxpayer pays the health insurance premium, not to exceed the taxpayer's cost of providing the health insurance benefit. The taxpayer may use the credit against either its income tax or its franchise tax liability. The credit may not exceed 50% of the taxpayer's tax liability. Any unused portions of the credit may be carried forward for five years. The credit is effective for taxable years beginning on or after January 1, 2007.

Definitions. –

- A small business is a taxpayer that employs no more than 25 full-time employees.
- An eligible employee is one that works a normal workweek of 30 or more hours and whose total wages or salary received from the business does not exceed $40,000 on annual basis.
- Providing health benefits means one or more of the following:
  - The taxpayer pays at least 50% of the premiums for health insurance coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee.
  - The employee has existing coverage under one or more of the following: Medicare; Medicaid; a government funded program; a health insurance or benefit arrangement that provides benefits similar to or in excess of benefits provided under the basic health care plan.

Sunset. **–** The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2009.

BILL ANALYSIS: This proposal would extend for five years, until the year 2014, the sunset on this tax credit.

BACKGROUND: Tax credits are considered a mechanism for encouraging and rewarding behavior that is beneficial to the State. Like appropriations, tax credits are expenditures of public funds for the benefit of certain businesses, interest groups, and other taxpayers. However, unlike appropriations, without some limitation, they can continue in perpetuity costing the State millions of dollars without review by the General Assembly. It was for this reason that in 1998, the Revenue Laws Study Committee recommended that sunsets be placed on virtually all of the tax credits as a means to review and reevaluate those credits. The thought was that periodic review would allow the General Assembly to consider each credit on its merits to determine whether it continues to serve a public purpose that justifies its cost.

2007-SVz-28

GENERAL ASSEMBLY OF NORTH CAROLINA

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. <u>This is not an official fiscal note</u>. 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 14, 2008

TO: Revenue Laws Study Committee

FROM: Barry Boardman
Fiscal Research Division

RE: 2007-SVz-26

FISCAL IMPACT

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

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
REVENUES ($ millions): Small Bus. Health insurance credit	** See Assumption and Methodology**				
EXPENDITURES:					
POSITIONS (cumulative):					

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

EFFECTIVE DATE: This act would be effective when it becomes law.

BILL SUMMARY: This proposal extends for five years the following tax credit for small business employee health benefits due to expire January 1, 2009:

Credit for Small Business Employee Health Benefits

Eligibility. **–** Effective for taxable years beginning on or after January 1, 2007, a small business that provides health benefits to all of its full-time employees is eligible for a tax credit. Under the Internal Revenue Code, an employer may deduct premiums paid for health insurance cost of its employees as a business expense. The credit is in addition to any expense deduction the taxpayer claimed on its income tax return for the health insurance costs.

Credit Amount. **–** The credit amount is equal to $250 per employee for whom the taxpayer pays the health insurance premium, not to exceed the taxpayer's cost of providing the health insurance benefit. The taxpayer may use the credit against either its income tax or its franchise tax liability. The credit may not exceed 50% of the taxpayer's tax liability. Any unused portions of the credit may be carried forward for five years. The credit is effective for taxable years beginning on or after January 1, 2007.

Definitions. –

- A <u>small business</u> is a taxpayer that employs no more than 25 full-time employees.
- An <u>eligible employee</u> is one that works a normal workweek of 30 or more hours and whose total wages or salary received from the business does not exceed $40,000 on annual basis.
- <u>Providing health benefits</u> means one or more of the following:
    - The taxpayer pays at least 50% of the premiums for health insurance coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee.
    - The employee has existing coverage under one or more of the following: Medicare; Medicaid; a government funded program; a health insurance or benefit arrangement that provides benefits similar to or in excess of benefits provided under the basic health care plan.

Sunset. **–** The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2009. This bill would extend the tax credit for five years through the year 2013.

ASSUMPTIONS AND METHODOLOGY: This credit became available to small businesses beginning in the 2007 tax year. It is too early to tell what credits were taken in tax year 2007, returns are just now being received and total credits taken will probably not be known until sometime in 2009. The fiscal note attached to the original bill estimated fiscal year impacts of $16 to $18 million. Until actually data becomes available, the previous fiscal analysis is our best understanding of what impact can be expected from extending the credit.

SOURCES OF DATA: Department of Revenue, Moody's economy.com

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #13

SUNSET RECYCLING FACILITY CREDITS

LEGISLATIVE PROPOSAL #13

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO PLACE A SUNSET ON THE CREDIT FOR INVESTING IN A LARGE OR MAJOR RECYCLING FACILITY AND TO EXTEND THE CREDIT FOR REINVESTMENT.

SHORT TITLE: Sunset Recycling Facility Credits.

SPONSORS:

BRIEF OVERVIEW: The proposal would place a sunset on the credit for investing in a large or major recycling facility and would extend until the year 2014 the sunset on the credit for reinvestment by a recycling facility.

FISCAL IMPACT:

EFFECTIVE DATE: This act would become effective when it becomes law.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-SVxz-20 [v.7] (04/17)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/9/2008 4:05:17 PM

Short Title:	Sunset Recycling Facility Credits.	(Public)
Sponsors:	Unknown.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO PLACE A SUNSET ON THE CREDIT FOR INVESTING IN A LARGE OR MAJOR RECYCLING FACILITY AND TO EXTEND THE CREDIT FOR REINVESTMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.27 is amended by adding a new subsection to read:

"(g) Sunset. – This section is repealed effective for taxable years beginning on or after January 1, 2014."

SECTION 2. Section 19 of S.L. 1998-55 is repealed.

SECTION 3. G.S. 105-129.28 reads as rewritten:

"**§ 105-129.28. Credit for reinvestment.**

(a) Credit. – A major recycling facility that is accessible by neither ocean barge nor ship and that transports materials to the facility or products away from the facility is allowed a credit against the tax imposed by Part 1 of Article 4 of this Chapter equal to its additional transportation and transloading expenses incurred with respect to the materials and products due to its inability to use ocean barges or ships. The additional expenses for which credit is allowed are expenses due to using river barges and expenses due to having to use another mode of transportation because the quantity that is transported by river barge is insufficient to meet the facility's needs. In order to claim the credit allowed by this section, the facility must provide the Secretary of Commerce audited documentation of the amount of its additional transportation and transloading expenses incurred during the taxable year.

(b) Cap. – The credit allowed to a major recycling facility under this section for the taxable year may not exceed ten million four hundred thousand dollars ($10,400,000).~~the applicable annual cap provided in the following table:~~

~~Taxable Year Cap~~

~~1998~~	~~$ 150,000~~
~~1999~~	~~$ 640,000~~
~~2000~~	~~$ 3,860,000~~
~~2001~~	~~$ 8,050,000~~
~~2002~~	~~$ 9,550,000~~
~~2003~~	~~$ 10,100,000~~
~~2004-2007~~	~~$ 10,400,000~~

(c) Reduction. – ~~For the first ten taxable years after the owner begins transporting materials and products to and from the major recycling facility, the~~ The credit allowed by this section must be reduced by the amount of credit allowed in previous years that was used for a purpose other than an allowable purpose under subsection (d) of this section, as certified by the Secretary of Commerce.

(d) Use of Credited Amount. – ~~For the first ten taxable years after the owner begins construction of the major recycling facility, the~~ The owner must use the amount of credit allowed under this section to pay for (i) investment in rail or roads associated with the facility, (ii) investment in water system infrastructure designed to reduce the expense of transporting materials and products to and from the recycling facility, and (iii) investment in land and infrastructure for other industrial sites located in the same county as the recycling facility. If the owner determines that there are no reasonable economic opportunities in a given year to use the total amount of credit for the expenditures described above, the owner may use the excess for investment at or in connection with the recycling facility. ~~facility above the initial required investment of three hundred million dollars ($300,000,000).~~

Expenses incurred for the purposes allowed in this subsection during a taxable year ~~in the ten-year period~~ may be counted toward a credit allowed in a later taxable year. ~~year in the ten-year period.~~ If the owner is not able to use the full amount of the credit during a taxable year for any of the purposes allowed by this subsection, the excess may be used for these purposes in subsequent taxable years.

The owner must provide the Secretary of Commerce with annual audited documentation demonstrating that the amount of credit received under this section during the previous twelve-month period has not been used for a purpose inconsistent with this subsection. If the Secretary of Commerce determines that the owner has used any of the credit for a purpose that is inconsistent with the requirements of this subsection, the Secretary of Commerce ~~shall~~ must certify the amount so used to the Secretary of ~~Revenue~~ Revenue, and the credit allowed the owner under this section for the following taxable year ~~shall be~~ is reduced by that amount in accordance with subsection (c) of this section.

~~After the end of the ten-year period, the amount of any credit allowed under this section that has not yet been used may be used for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).~~

(e) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax imposed by Part 1 of Article 4 of this Chapter for the taxable year reduced by the sum of all credits allowable, the Secretary ~~shall~~ must refund the excess to the taxpayer.

The refundable excess is considered an overpayment by the taxpayer.~~governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in Part 1 of Article 4 of this Chapter.~~ In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(f) Sunset. – This section expires for taxable years beginning on or after January 1, 2014."

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

BILL ANALYSIS

DRAFT 2007-SVxz-20: Sunset Recycling Facility Credits

Committee:	Revenue Laws Study Committee	**Date:**	May 7, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:	Bill Draft		Committee Counsel

SUMMARY:* *This proposal would place a sunset on the credit for investing in a large or major recycling facility and would extend until the year 2014 the sunset on the credit for reinvestment by a recycling facility.

CURRENT LAW:

Credit for Investing in Large or Major Recycling Facility (§ 105-129.27)

*Eligibility***.** – This credit, enacted in 1998, was intended as an alternative to the machinery and equipment credit available under the Bill Lee Act. It provides a credit to an owner who purchases or leases machinery and equipment for a major recycling facility in this State. The credit is allowed against franchise or income tax. The credit currently has no sunset.

Credit Amount. **–** The credit amount depends on the recycling facility.

- An owner who purchases or leases machinery and equipment for a **major** recycling facility is eligible for a credit equal to **50%** of the amount paid for the machinery and equipment.
- An owner who purchases or leases machinery and equipment for a **large** recycling facility is eligible for a credit equal to **20%** of the amount paid.

*Carryforward Period***.** – 25 years

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

Forfeiture. **–** If any machinery or equipment for which a credit is allowed is not placed in service within 30 months after the credit was allowed, the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest.

Credit for Reinvestment by Recycling Facility (§ 105-129.28)

*Eligibility***. –** Beginning with the 1998 tax year, a major recycling facility that is accessible by neither ocean barge nor ship and that and incurs additional expenses due to transporting its materials and products by alternative modes of transportation is allowed a refundable corporate income tax reinvestment credit. For the first ten years the reinvestment credit is in effect, a major recycling facility must use the amount received in credit to invest in rail and roads associated with the facility, in transportation infrastructure to reduce the expense of transporting materials and products to and from the facility, or in land and infrastructure for industrial sites, other than the facility itself, in the same county. If there are not enough reasonable opportunities for investments in those purposes in a given year, however, the major recycling facility may invest the amount of credit received in the facility itself, but only after it has made the minimum investment of $300 million required to qualify as a major recycling facility. The facility must document its compliance with this reinvestment requirement and it forfeits any part of the credit it spends for another purpose.

Credit Amount. **–** The reinvestment credit is equal to the amount of these additional expenses, which must be documented annually to the Secretary of Commerce. The credit is subject to a dollar cap each year, in increasing amounts. In 1999, the cap was $640,000. In 2004, the cap leveled off at $10.4 million a year.

Sunset. **–** The credit expired for taxable years beginning on or after January 1, 2008. According to S.L. 1998-55, the purpose of the ten-year sunset was to allow a determination as to whether any major recycling facility continues to experience additional transportation and transloading expenses due to its inability to use ocean barges or ships. The intent is to postpone the sunset if any major recycling facility can document that it is still experiencing additional expenses in 2008 due to its inability to use ocean barges or ships. The intent is to postpone the sunset if any major recycling facility can document that it is still experiencing additional expenses in 2008 due to its inability to use ocean barges or ships to transport materials and products.

BILL ANALYSIS: The proposal would do the following two things:

- Place a six-year sunset, expiring in the year 2014, on the credit for investment in a large or major recycling facility.
- Extend for six years the current January 1, 2008 sunset on the credit for reinvestment. The bill deletes language related to the initial ten-year period for the credit while preserving the conditions imposed on the use of the credit proceeds related to reinvestment in infrastructure.

EFFECTIVE DATE: This act would be effective when it becomes law.

2007-SMSV-20

GENERAL ASSEMBLY OF NORTH CAROLINA

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 14, 2008

TO: Revenue Laws Study Committee

FROM: Barry Boardman
Fiscal Research Division

RE: 2007-SVz-26

FISCAL IMPACT

	Yes ( )	No ( )	No Estimate Available ( )		
	FY 2008-09	**FY 2009-10**	**FY 2010-11**	**FY 2011-12**	**FY 2012-13**
REVENUES ($ millions):					
Major Recycling Facility Reinvestment	**(10.4)**	**(10.4)**	**(10.4)**	**(10.4)**	**(10.4)**
EXPENDITURES:					
POSITIONS (cumulative):					

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

EFFECTIVE DATE: This act would be effective when it becomes law.

BILL SUMMARY: This bill draft places a sunset on the credit for investing in a large or major recycling facility (G.S. 105-129.27) of January 1, 2014. This bill also renews the credit for reinvestment in a large or major recycling facility (G.S. 105-129.28).

Sunset. **–** The reinvestment credit is currently expired for taxable years beginning on or after January 1, 2008. This bill would extend the tax credit for five years through the year 2013.

ASSUMPTIONS AND METHODOLOGY: This bill makes two changes to statute. The first change placing a sunset on investing in a large of major recycling facility and will have no fiscal impact through FY 2012-13. The second part of the bill, which renews the expired reinvestment credit will have a fiscal impact. The reinvestment credit is capped each year at $10.4 million. Based on recent history and conversations with those associated with major recycling facilities, the capped level is expected to be reached each fiscal year.

SOURCES OF DATA: Department of Revenue, Moody's economy.com

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #14

SUPPLEMENTAL PEG SUPPORT

LEGISLATIVE PROPOSAL #14

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO CLARIFY THE DISTRIBUTION OF SUPPLEMENTAL PEG SUPPORT FUNDING, AS REQUESTED BY THE LEAGUE OF MUNICIPALITIES AND THE SOUTHEAST ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS.

SHORT TITLE: Supplemental PEG Support.

SPONSORS:

BRIEF OVERVIEW: The proposal would clarify the distribution of supplemental PEG support funding. The League of Municipalities recommends the proposed changes to the Revenue Laws Study Committee.

FISCAL IMPACT:

EFFECTIVE DATE: This act would become effective when it becomes law.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U **D**

BILL DRAFT 2007-RBz-40B [v.1] (04/26)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/7/2008 7:37:34 AM

Short Title: Supplemental PEG Support. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DISTRIBUTION OF SUPPLEMENTAL PEG SUPPORT FUNDING, AS REQUESTED BY THE LEAGUE OF MUNICIPALITIES AND THE SOUTHEAST ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.44I(b) reads as rewritten:

"(b) Supplemental PEG Support. – The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of twenty-five thousand dollars ($25,000) for each qualifying PEG channel ~~operated~~ certified by the county or city. The amount of money distributed under this subsection may not exceed two million dollars ($2,000,000) in a fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year would otherwise exceed this maximum amount, the Secretary must proportionately reduce the applicable amount distributable for each PEG channel. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than two million dollars ($2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund established in G.S. 66-359.

A county or city must certify to the Secretary by July 15 of each year ~~the number of qualifying~~ each of the qualified PEG channels ~~it operates.~~ provided for its use by a cable service provider under either G.S. 66-357 or an existing agreement. ~~A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d).~~ A county or city must include the name of the PEG channel operator for each qualifying PEG channel it certifies and any other information required by the Secretary. If a qualifying PEG channel has more than one PEG channel operator, then a county or city must included each operator of the PEG channel on its certification. A county or city may not receive PEG channel support under this subsection for more than three qualifying PEG channels.

The amount included under this subsection in a distribution to a county or city is intended to supplement the PEG channel support available in the amount distributed under this section. ~~The money distributed to a~~ A county or city must use the money distributed to it under this subsection ~~must be used by it~~ for the operation and support of each of the qualified PEG ~~channels.~~ channels it certified by allocating the amount it receives equally among each of the qualified PEG channels. A county or city must distribute the money received under this subsection to the PEG channel operator of the qualified PEG channel within 30 days of its receipt of the supplemental PEG support funds from the Department, or as specified in an interlocal agreement. If a qualified PEG channel has more than one PEG channel operator, then the county or city must distribute the amount allocated for that PEG channel equally to each PEG channel operator, or as specified in an interlocal agreement. ~~For~~

If a county or city determines that it certified a PEG channel in error, the county or city must submit a revised certification to the Secretary and it must return all supplemental PEG channel support distributed to it as a result of the error. The Secretary must add the funds returned to the total amount to be allocated under this subsection in the following fiscal year. The amount distributed under this subsection for the following fiscal year may exceed the two million dollars ($2,000,000) limit by the amount of funds returned in the prior fiscal year.

For purposes of this subsection, the ~~term "PEG channel" has the same meaning as in G.S. 66-350.~~ following definitions apply:

(1) Existing agreement. – Defined in G.S. 66-350.

(2) PEG channel. – Defined in G.S. 66-350.

(3) PEG channel operator. – An entity that does one or more of the following:

a. Produces programming for delivery on a PEG channel.

b. Provides facilities for the production of programming or playback of programming for delivery on a PEG channel.

(4) Qualifying PEG channel. – A PEG channel that meets all of the following programming requirements for at least 120 continuous days:

a. The PEG channel must deliver at least eight hours of scheduled programming a day.

b. The PEG channel must deliver at least six hours and 45 minutes of scheduled, non-character-generated programming a day.

c. The programming content of the PEG channel must not repeat more than fifteen percent (15%) of the programming content on any other PEG channel provided to the certifying county or city."

SECTION 2. Notwithstanding G.S. 105-164.44I(b), certifications of qualifying PEG channels for use in distributing fiscal year 2008-2009 supplemental PEG channel support may be submitted to the Secretary on or before September 15, 2008. The distribution of supplemental PEG channel support that must be made within

75 days after June 30, 2008, shall be based on the qualifying PEG channel certification in effect for the prior distribution.

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

BILL DRAFT 2007-RBz-40B: Supplemental PEG Support

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	May 7, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY:* *This bill draft would clarify the distribution of supplemental PEG support funding. The League of Municipalities recommends the proposed changes to the Revenue Laws Study Committee. The bill would become effective when it becomes law. It would affect distributions made in the 2008-09 fiscal year.

CURRENT LAW: In 2006, the General Assembly established uniform taxes for video programming services by applying the combined general rate of sales tax to all video programming services and repealing the local authority to impose a local franchise tax. It preserved the local government revenue stream by distributing part of the sales tax revenues from telecommunications and video programming services to the counties and cities. The distribution formula is based upon the amount of cable franchise tax imposed during the first six months of fiscal year 2006-2007 plus any subscriber fees imposed during that same period.

Of the revenue distributable to local governments, two million dollars ($2,000,000) a year is allocated for supplemental PEG channel support. A PEG channel is a public, educational, or governmental access channel provided to a county or city. The $2,000,000 allocation is distributed to counties and cities with qualifying PEG channels. The annual amount per qualifying PEG channel is $25,000. A county or city can not receive supplemental PEG channel support for more than three PEG channels. The amount distributed to a county or city as supplemental PEG channel support must be used by it for the operation and support of PEG channels. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than $2,000,000, the Secretary must credit the excess amount to the PEG Channel Fund to be used for matching local grants for PEG channel support.

At the time the General Assembly considered the legislation in 2006, the information the staff had collected indicated that there would be 36 qualifying PEG channels. There were 276 certified PEG channels in the March 2008 distribution. In working with the data, the Committee staff and the League of Municipalities believe that the form used by the Department of Revenue is not as clear as it could be. This confusion may have resulted in some channels being double counted and in some channels receiving a distribution although they did not qualify for one.

BILL ANALYSIS: This bill draft seeks to clarify the distribution requirements and to provide that all qualifying PEG channels receive supplemental PEG support funding. The bill may not drastically reduce the number of channels receiving a distribution, but it should result in the allocations being received by the qualifying PEG channels. The bill does the following:

- It defines in the distribution statute what constitutes a 'qualifying PEG channel'. The definition of a qualifying PEG channel differs slightly from the current law. It provides that the amount of character-generated programming may not exceed 15% of eight hours of scheduled programming (roughly six hours and 45 minutes) rather than 15% of the total number of scheduled programming hours.
- It allows the Secretary of Revenue to request additional information.

- It defines a PEG channel operator, requires a county or city to include the name of the PEG channel operator for each qualifying PEG channel it certifies, and requires the county or city to distribute the proceeds to the PEG channel operator. This change will better ensure that the money is distributed by the local government for the use of the PEG channels. Sometimes, a single PEG channel has more than one operator. This change will ensure that the funds go to the operator of the PEG channel, even if the PEG channel is claimed by more than one local government.
- It requires a county or city to certify all qualifying PEG channels and to allocate the proceeds it receives equally among all of its certified PEG channels, and it provides that the distribution must be made to the PEG channel within 30 days of the county or city's receipt of the supplemental PEG support revenue. Under current law, a county or city may only receive supplemental funding for three PEG channels. Some qualifying PEG channels believe the funds are not being distributed fairly among the channels. These changes ensure:
    - That each qualifying PEG channel receives supplemental funding, even if a county or city has more than three qualifying channels.
    - That each qualifying PEG channel receives an equal amount of funding.
    - That each qualifying PEG channel receives the funding in a timely manner.
- It provides a method to account for revenues that are distributed in error. If it is determined that a county or city received a distribution in error, the county or city must submit a revised certification and return all funds received in error. Any funds returned will be added to the amount to be distributed in the following year as supplemental PEG support funding.
- It extends the period of time a county and city has to make its certification in 2008 from July 15, 2008, to September 15, 2008. It provides that the Department may make the distribution of supplemental PEG channel support for the quarter ending June 30, 2008, based upon the qualifying PEG channel certifications in effect for the fiscal year 07-08 distributions.

APPENDIX A

AUTHORIZING LEGISLATION
ARTICLE 12L OF CHAPTER 120
OF THE
GENERAL STATUTES

ARTICLE 12L

Revenue Laws Study Committee

§ 120-70.105. Creation and membership of the Revenue Laws Study Committee.

(a) Membership. -- The Revenue Laws Study Committee is established. The Committee consists of 16 members as follows:

(1) Eight members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.

(2) Eight members appointed by the Speaker of the House of Representatives; the persons appointed may be members of the House of Representatives or public members.

(b) Terms. -- Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Legislative members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1997-483, s. 14.1; 1998-98, s. 39.)

§ 120-70.106. Purpose and powers of Committee.

(a) The Revenue Laws Study Committee may:

(1) Study the revenue laws of North Carolina and the administration of those laws.

(2) 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.

(3) Call upon the Department of Revenue to cooperate with it in the study of the revenue laws.

(4) Report to the General Assembly at the beginning of each regular session concerning its determinations of needed changes in the State's revenue laws.

These powers, which are enumerated by way of illustration, shall be liberally construed to provide for the maximum review by the Committee of all revenue law matters in this State.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. When a recommendation of the Committee, if enacted, would result in an increase or decrease in State revenues, the report of the Committee must include an estimate of the amount of the increase or decrease. (1997-483, s. 14.1.)

§ 120-70.107. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Revenue Laws Study Committee. The Committee shall meet upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) The Committee shall be funded by the Legislative Services Commission from appropriations made to the General Assembly for that purpose. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1 and G.S. 138-5. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (1997-483, s. 14.1.)

APPENDIX B

MEETING AGENDAS

Revenue Laws Study Committee Agenda

Sen. John Kerr | Rep. Paul Luebke

Friday, December 14, 2007
Room 544, Legislative Office Building
9:30 a.m.

I. **Welcoming Remarks and Introductions**

II. **Overview of 2007 Tax Law Changes and Fate of the Revenue Laws Study Committee's Recommendations to the 2007 General Assembly**

Cindy Avrette and Trina Griffin, Research Division

III. **Overview of 2007 Property Tax Legislation**

Martha Walston, Fiscal Research Division
Dan Ettefagh, Legislative Drafting Division

Comments from Interested Parties

- Pete Rodda, Forsyth County Tax Assessor/Tax Collector
- Stan Duncan, Henderson County Tax Assessor and Chair of the Exemptions/Use Value Committee of the NC Association of Assessing Officers
- Paul Meyer, Senior Associate General Counsel for the NC Association of County Commissioners

IV. **Property Tax Issues for 2008**

- **Revaluations**

  Overview – Dan Ettefagh, Legislative Drafting Division
- **Liens on Mobile Homes**

  Overview – Martha Walston, Fiscal Research Division
- **Comments from Interested Parties**

V. **Adjournment**

Next Meeting Date: January 25, 2008
All meetings in Room 544, LOB, at 9:30 a.m.

<u>REVENUE LAWS STUDY COMMITTEE AGENDA</u>

Sen. John Kerr   Rep. Paul Luebke

Wednesday, March 5, 2008
Room 1228, Legislative Building
9:30 a.m.

I. Approval of the Minutes from the December 14, 2007 Meeting

II. Work Opportunity Tax Credit

- Heather Fennell, Research Division

III. IRC Update

- Trina Griffin, Research Division
- Barry Boardman, Fiscal Research Division

IV. Gift Tax

- Overview
  – Cindy Avrette, Research Division
- Discussion of Proposed Revisions
  – Bill Kratt, Gift Tax Subcommittee of the Legislative Committee of the Estate Planning and Fiduciary Law Section of the NC Bar Association

V. Revenue Laws Technical & Administrative Changes

- Trina Griffin, Research Division

VI. Adjournment

Future Meeting Dates: April 2 and April 30
All meetings in Room 544, LOB, at 9:30 a.m.

<u>REVENUE LAWS STUDY COMMITTEE AGENDA</u>

Sen. John Kerr　　　　　　Rep. Paul Luebke

Wednesday, April 2, 2008
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of the Minutes from the March 5 Meeting**

II. **Sales Tax Exemption for Disaster Assistance -** *Legislative Proposal*

Cindy Avrette, Research Division

III. **Modify Estate Tax Law –** *Legislative Proposal*

- Cindy Avrette, Research Division
- Barry Boardman, Fiscal Research Division

IV. **Refunds of Unconstitutional Taxes**

- Trina Griffin, Research Division

V. **Property Tax Issues**

- *Circuit Breaker Tax Modifications* - Dan Ettefagh, Bill Drafting Division
- *Quadrennial Revaluations and Mobile Home Liens* – Dan Ettefagh, Bill Drafting Division, and Martha Walston, Fiscal Research Division
- *Simplify Ownership of PUV Property* – Martha Walston, Fiscal Research Division

VI. **Review of Tax Credits that Expire in 2008-2009**

- Trina Griffin, Research Division

VII. **Video Programming Legislation (S.L. 2006-151)**

- Overview of 2006 Legislation and Revenue Implications
  Cindy Avrette, Research Division
  Rodney Bizzell & Sandra Johnson, Fiscal Research Division
- Comments from the League of Municipalities
  Karl Knapp, Research & Policy Manager, NC League of Municipalities
- Report from Attorney General's Office, Consumer Protection Division
  Gary R. Govert, Acting Senior Deputy Attorney General, Consumer Protection Division, North Carolina Department of Justice
- Comments from the Southeast Association of Local Government

Next Meeting Date: April 30, 2008
LOB Room 544 at 9:30 a.m.

Telecommunications Officers & Advisors (SEATOA)
Michael Williams, Cable Administrator, Public Affairs Department, City of Raleigh

VII. Video Programming Legislation (S.L. 2006-151), continued

- Comments from the Video Programming Industry
  Dwight Allen, Allen Law Offices, AT&T
  Mark Prak, Brooks Pierce, Time Warner Cable

VIII. IRC Update

- Trina Griffin, Research Division
- Barry Boardman, Fiscal Research Division

IX. Motor Fuel Tax Issues – *Legislative Proposal*

- Cindy Avrette, Research Division

X. Adjournment

Next Meeting Date: April 30, 2008
LOB Room 544 at 9:30 a.m.

<u>REVENUE LAWS STUDY COMMITTEE AGENDA</u>

Sen. John Kerr   Rep. Paul Luebke

Wednesday, April 30, 2008
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of the Minutes from the April 2 Meeting**

II. **Extension of Sunset for Credit for Reinvestment and Establishment of Sunset for Credit for Investing in Major Recycling Facility**

- Johnny Jacobs, Controller for Nucor Steel Corp.

III. **Franchise Tax Loophole Closings – *Legislative Proposal***

- Cindy Avrette, Research Division
    - LLCs that elect to be taxed as S Corporations
    - Captive REITS

IV. **Publicly Traded Partnerships – *Legislative Proposal***

- Cindy Avrette, Research Division

V. **Tax on Heavy Equipment Short-Term Rental Agreements – *Legislative Proposal***

- Martha Walston, Fiscal Research Division

VI. **Class Actions – *Legislative Proposal***

- Trina Griffin, Research Division

VII. **Motor Fuel Tax Changes – *Legislative Proposal***

- Cindy Avrette, Research Division

VIII. **Simplify Ownership of PUV Property – *Revised Legislative Proposal***

- Martha Walston, Fiscal Research Division

IX. **911 Technical Corrections – *Legislative Proposal***

- Heather Fennell, Research Division

X. **Video Programming – *Legislative Proposal***

- Cindy Avrette, Research Division

- Sandra Johnson, Fiscal Research Division

XI. IRC Update – *Legislative Proposal*

- Trina Griffin, Research Division

XII. Work Opportunity Tax Credit – *Legislative Proposal*

- Heather Fennell, Research Division

XIII. Revenue Laws Technical Changes: Part II – *Legislative Proposal*

- Trina Griffin, Research Division

XIV. Review Proposals Tentatively Approved by Committee

- *Circuit Breaker Tax Modifications*
- *Quadrennial Revaluations & Mobile Home Liens*
- *Modify Estate Tax Law (Stowe* case*)*
- *Sales Tax Exemption for Disaster Assistance*
- *Extend Expiring Tax Credits*
  - *R&D credit*
  - *State Ports Tax Credit*
  - *Credit for Small Business Employee Health Benefits*

XV. Approval of Final Report

XVI. Adjournment

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. John Kerr   Rep. Paul Luebke

Wednesday, May 7, 2008
Room 1027, Legislative Building
10:00 a.m.

I. **Approval of the Minutes from the April 30, 2008 Meeting**

II. **Credit for Reinvestment by a Recycling Facility**

- Comments from Department of Commerce

III. **Items to be Decided**

- **Reports by Publicly Traded Partnerships**
  Cindy Avrette, Research Division
- **Sunsets for Recycling Facility Credits**
  Trina Griffin, Research Division
- **Tax on Short-Term Heavy Equipment Rentals**
  Martha Walston, Fiscal Research Division
- **PEG Channels and Video Programming Changes**
  Cindy Avrette, Research Division

VI. **Legislative Proposals Tentatively Approved for Inclusion in Final Report**

- **Procedure for Tax Class Actions**
  Trina Griffin, Research Division
- **IRC Update**
  Trina Griffin, Research Division
- **Close Franchise Tax Loopholes**
  Cindy Avrette, Research Division
- **Extend Expiring Tax Credits**
  Trina Griffin, Research Division
- **Modify Estate Tax Law**
  Cindy Avrette, Research Division
- **Deferred Property Tax Program & Benefit Changes**
  Dan Ettefagh, Bill Drafting Division
  Martha Walston, Fiscal Research Division
- **PUV Ownership, Quadrennial Revaluations, and Mobile Home Liens**
  Dan Ettefagh, Bill Drafting Division
  Martha Walston, Fiscal Research Division
- **Sales Tax Exemption for Disaster Assistance**

Cindy Avrette, Research Division

- **Technical, Administrative, and Clarifying Changes**
  Trina Griffin, Research Division

IV. Approval of Final Report

V. Adjournment

APPENDIX C

DISPOSITION OF COMMITTEE'S RECOMMENDATIONS TO THE 2007 SESSION OF THE 2007 GENERAL ASSEMBLY

SHORT TITLE	SENATE SPONSORS	HOUSE SPONSORS	BILL #	FINAL STATUS*
Conservation Tax Credit Modifications	**Clodfelter, Dalton, Hartsell, Hoyle, and Kerr**	**Luebke**	HB 463 SB 241	**Enacted*** **SL 2007-309 (HB 463)**
IRC Update	**Clodfelter, Dalton, Hartsell, Hoyle, and Kerr**	**Carney**	HB 458 SB 240	**Enacted** **SL 2007-323, Sec. 31.1 (Budget Bill)**
Modify Tax on Property Tax Contract	**Kerr, Clodfelter, Hartsell, Hoyle, and Dalton**	**Wainwright**	SB 238 HB 262	**Enacted*** **SL 2007-250 (SB 238)**
Reform Tax Appeals	**Clodfelter, Dalton, Hartsell, Hoyle, and Kerr**		SB 242	**Enacted*** **SL 2007-491**
Revenue Laws & Motor Fuels Tax Technical Changes	**Hartsell, Clodfelter, Dalton, Hoyle, and Kerr**	**Wilkins**	HB 258 SB 540	**Enacted*** **SL 2007-527 (SB 540)**
Streamlined Sales Tax Changes	**Kerr, Clodfelter, Dalton, Hartsell, and Hoyle**	**Hill**	HB 257 SB 239	**Enacted*** **SL 2007-244 (HB 257)**

* Bills were modified prior to enactment.

APPENDIX D

LETTER OF SUPPORT
under signature of
PETER R. HERMANN, CAE
PRESIDENT & CEO
NORTH CAROLINA TECHNOLOGY ASSOCIATION
in re
FIVE-YEAR EXTENSION OF THE STATE'S RESEARCH & DEVELOPMENT TAX CREDIT

APPENDIX E

LETTER OF SUPPORT
under signatures of
THOMAS J. EAGAR, CEO
CARL J. STEWART, JR. CHAIRMAN
NORTH CAROLINA STATE PORTS AUTHORITY
in re
EXTENSION OF THE STATE'S PORT TAX CREDIT
TO 2014
APRIL 2, 2008

NORTH CAROLINA PORTS

Thomas J.
Eagar
Chief Executive
Officer

April 2, 2008

The Honorable John Kerr, III, Co-Chair
The Honorable Paul Luebke, Co-Chair
Revenue Laws Study Committee
NC General Assembly
Raleigh, NC 27601

Dear Chairs:

The Revenue Laws Study Committee will meet today to continue its review of the State's revenue laws and to also review the tax credits that expire in 2008-2009. The NC State Ports Tax Credit will expire January 2009. Please consider including in the committee's report to the General Assembly the recommendation to extend the Ports tax credit to 2014.

The NC Ports tax credit legislation, originally enacted in **1992,** encourages exporters and importers to use the two State-owned port terminals at Wilmington and Morehead City. This credit was extended in 1995, 1997, 2001, 2002 and 2003. It equals the amount of fees for wharfage, handling, and throughput paid to the North Carolina State Ports Authority in the taxable year that exceeds the average amount of charges paid to the Authority for the current tax year and the two previous tax years. The credit is limited to 50% of the tax imposed on the taxpayer for the taxable year and has a five-year carry forward on excess credit.

Your consideration to include a recommendation in the Revenue Laws Study Committee Report to extend the tax credit would allow the Ports to continue offering this business incentive to existing and potential customers and to stimulate economic growth for the State. Extending the NC Ports tax credit costs the State's general fund less than one million dollars each year, and allows companies such as CK International Lumber, QVC, Drexel Heritage Furniture, and Martin Marietta to be competitive in world markets. The NC Ports tax credit supports these and other industries and the thousands of jobs and millions of dollars in tax revenues that they contribute to our State.

Your favorable consideration of extending the NC State Ports tax credit to provide for consideration in the short session will enable North Carolina to continue to compete with neighboring states for a share of the global market as east coast ports prepare for anticipated growth.

Thanks for your consideration.

Sincerely,

Thomas J. Eagar
Chief Executive Officer

Carl J. Stewart, Jr.
Chairman, NCSPA

NORTH CAROLINA STATE PORTS AUTHORITY
P.O. Box 9002 ▪ Wilmington, NC 28402 ▪ Tel: (910) 343-6232 ▪ Fax: (910) 343-6237 ▪ Email: tom_eagar@ncports.com
http: //www.ncports.com

APPENDIX F

REPORT
issued by
RITA HARRIS
GOVERNMENT RELATIONS DIRECTOR
NC STATE PORTS AUTHORITY

NC STATE PORTS TAX CREDIT
RATIONALE

NC State Ports Tax Credit

Rationale:
The state ports tax credit encourages businesses to use the two State-owned port terminals at Wilmington and Morehead City. The extension of the Ports Tax Credit would allow the Ports to continue offering this business incentive to existing and potential customers and to stimulate economic growth for the State. Extending the NC Ports tax credit costs the State's general fund less than one million dollars each year, and allows companies such as Goodyear, CK International, JB International, Drexel Heritage Furniture, QVC, Martin Marietta, EN Beards Hardwoods Lumber, Edwards Wood Products, Culp, Inc., Broyhill, Kilop USA, Thomasville Furniture, Cormetech, Stein Fibers, Ltd., New South International, and Sonoco to be competitive in world markets. The NC Ports tax credit supports these and other industries and the thousands of jobs and millions of dollars in tax revenues that they contribute to our State.

The NC Ports tax credit makes a difference in whether customers can be profitable in their international trade initiatives. Success in world markets requires ports customers to be cost effective. Plus, they welcome the opportunity to support NC State Ports! As more North Carolina companies use the State Ports, international shipping companies are encouraged to serve these businesses through the Ports, and more NC companies will be able to reach more parts of the world. The NC Ports tax credit also can provide an additional advantage to new and existing businesses considering sites in North Carolina for manufacturing operations. Reducing shipping costs keeps customers competitive in the global marketplace and provides increased business opportunities that create more jobs and a stronger North Carolina

Background:
The state ports tax credit, originally enacted in 1992, encourages exporters and importers to use State-owned port terminals. This credit, extended in 1995, 1997, 2001, 2002 and 2003 expires January 2009. NC State Port Authority seeks legislative consideration of tax credit extension to 2014.

The tax credit equals the amount of wharfage, handling, and throughput charges paid to the North Carolina State Ports Authority in the taxable year that exceeds the average amount of charges paid to the Authority for the current tax year and the two previous tax years. The credit is limited to 50% of the tax imposed on the taxpayer for the taxable year and has a five-year carry forward on excess credit. The maximum cumulative credit that one taxpayer may claim is $2 million. The estimated cost to the General Fund is less than one million annually.

Rita Harris, Government Relations Director, NC State Ports Authority, 919 715 2785

APPENDIX G

DOCUMENT
prepared by
NUCOR STEEL CORPORATION

NUCOR STEEL—HERTFORD