2011-2012
REVENUE LAWS STUDY COMMITTEE

REPORT TO THE 2011-2012 GENERAL ASSEMBLY OF NORTH CAROLINA 2012 SESSION

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TABLE OF CONTENTS

Appendices*

A. . Authorizing Legislation, Article 12L of Chapter 120 of the General Statutes
B. Disposition of Revenue Laws Study Committee Recommendations
C. Meeting Agendas
D. Letter to the Revenue Laws Study Committee Regarding Validity of Executive Order 113 extending Unemployment Benefits

*All of the meeting handouts, including Power Point presentations, may be accessed online in PDF format at the Revenue Laws Study Committee website: http://www.ncleg.net/committees/revenuelaws

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

Senator Bob Rucho, Co-Chair

Representative Julia C. Howard, Co-Chair
Representative Daniel F. McComas, Co-Chair

May 2, 2012

TO THE MEMBERS OF THE 2012 GENERAL ASSEMBLY:

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

Respectfully Submitted,

Sen. Bob Rucho, Co-Chair

Rep. Julia C. Howard, Co-Chair

Rep. Daniel F. McComas, Co-Chair

2011-2012

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.[1] Committee members may be legislators or citizens. The co-chairs for 2011-2012 are Senator Bob Rucho and Representatives Julia Howard and Daniel McComas.

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.[2] A committee notebook containing the Committee minutes and all information presented to the Committee is filed in the Legislative Library and may also be accessed online at the Committee's website: http://www.ncleg.net/committees/revenuelaws.

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[1] The Speaker of the House of Representatives appointed a ninth legislative member, a non-voting advisory member in 2007, and again in 2009.

[2] The General Assembly established a permanent subcommittee under the Revenue Laws Study Committee to study and examine the property tax system in S.L. 2002-184, s. 8. However, subcommittee members were not appointed and the subcommittee did not function from 2004 through 2010. In S.L. 2011-266, s.1.15, the General Assembly repealed the subcommittee. The full Committee continues to review the property tax system and recommend changes to it.

COMMITTEE PROCEEDINGS

The 2011 General Assembly enacted the Revenue Laws Study Committee's three legislative proposals in whole or in part. Appendix B lists the Committee's recommendations to the 2011 General Assembly and the action it took on them. A document entitled "**2011 Finance Law Changes**" summarizes all of the tax legislation enacted in 2011. It is available in the Legislative Library located in the Legislative Office Building. It may also be viewed on the Legislative Library's website[3] and the Revenue Laws Study Committee's website.[4]

The Revenue Laws Study Committee met eight times after the adjournment of the 2011 Regular Session of the 2011 General Assembly on June 18, 2011. Appendix C 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. The Committee considered a number of issues, but it ultimately recommended five pieces of legislation. The Committee considers 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.

PROPERTY TAX

Questions involving the property tax system, the appeals process for property tax valuations, and the reappraisal methodology have received greater attention recently, and the Committee looked at property tax issues at both the October 5, 2012, and the February 1, 2012, meeting dates. The Committee heard nine presentations from Committee staff, the Department of Revenue, the School of Government, and other

[3] http://www.ncleg.net/LegLibrary under 'Publications,' 'Tax and Finance Law Changes'
[4] http://www.ncleg.net/committees/revenuelaws

interested taxpayers and businesses relating to the basics of the Machinery Act and how property tax liability is calculated thereunder, the mechanics of reappraisals by counties, property tax relief programs, valuation of business personal property, and the process by which property tax liability and valuations can be appealed.

In the wake of decreasing home and land values over the past quadrennium, the issue of whether property tax values properly reflect market values of properties has arisen. Property taxes generate $7.8 billion in revenue and account for a significant portion of local revenue. By virtue of the Constitution of this State, the General Assembly classifies property for taxation and must tax uniformly in every unit of local government.[5] The imposition of the property tax involves four activities: listing, assessing, collecting, and enforcing. The standard used to value property is true value or market value as of January 1 of the year of reappraisal. A reappraisal functions to equalize the tax burden between property owners and different property classes. Real property is reappraised no less than once every eight years. While counties have the authority to advance this octennial cycle, the majority of counties choose not to, which can lead to the assessed value as of the listing date diverging from the current market value.[6] Although market value is the default valuation for property tax liability, the General Assembly has enacted a number of property tax relief programs for property meeting certain ownership and use requirements.[7] Where a taxpayer disagrees with the property tax value assigned, he or she may appeal informally to the assessor, then to the

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[5] Uniformity requires that exemptions must be the same throughout the State, that the valuation process must be the same for each class of property throughout the State, and that there must be one tax rate for all property within a taxing unit.

[6] Changes in property tax values between reappraisals are permitted, but only for certain grounds. The value can change between reappraisals, e.g., as a result of a physical change (additions, construction, destruction) but not, e.g., as a result of change in the economy or market.

[7] Notable examples include the exclusion for permanent residences of elderly or disabled taxpayers and veterans; present use valuation for farmlands; and property tax exemptions for property that serves the public interest (such as charitable, literary, educational, scientific, etc.).

Board of Equalization and Review, then to the Property Tax Commission, and finally to the Court of Appeals and Supreme Court of the State. The number of appeals increases in revaluation years and, generally, has increased sharply since 2007; however, more than 95% of appeals are settled or withdrawn prior to reaching the Property Tax Commission. Costs associated with appeals are low, and taxpayers may represent themselves throughout the process, receiving procedural guidance from the Property Tax Division.

The valuation of certain establishments' business personal property received attention regarding the methodology of appraisal. Generally, personal property is reappraised annually at its true value in money using the cost approach, the sales approach, or the income approach. Representatives of a business presented to the Committee that current Department recommendations were incorrect regarding use of historical cost of business personal property for valuation when the property had been purchased from another owner in an arm's length transaction. The Department presented that business personal property commonly is valued using the cost approach, which takes into consideration original, or historical, cost; current replacement cost new; useful economic life; and depreciation. Using those factors and trending data, the historical cost is used to reach the cost of the asset in present dollars.

The Committee's review of the property tax valuation methodologies and processes resulted in no recommended changes or legislation.

SURPLUS LINES INSURANCE

Surplus lines insurance is a line of insurance provided by insurers who are authorized to do business in this State, but who are not licensed in this State, referred to as "nonadmitted insurers." There is a 5% tax on the gross premiums charged for

surplus lines insurance.[8] S.L. 2011-120 changed the law governing surplus lines insurers to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA). The federal changes are intended to make the regulation of the surplus lines market more efficient and more uniform on a national basis.[9] However, the Department of Insurance, which is the agency charged with collecting the tax, was concerned before the law took effect that the changes might result in a reduction of surplus lines tax revenues because North Carolina has fewer domiciled companies with multistate exposures compared to many other states. The federal law gives states the option of either keeping 100% of all surplus lines tax collected from premiums paid by domestic companies or sharing tax revenues via a multistate compact. S.L. 2011-120 changed the law, effective July 21, 2011, so that North Carolina now collects 100% of the surplus lines revenue on multistate risks in which North Carolina is considered to be the home state. S.L. 2011-120 also directed the Revenue Laws Study Committee, in cooperation with the Commissioner of Insurance, to study the potential impact of entering into a nonadmitted insurance multistate agreement for the purpose of carrying out the NRRA. Specifically, the Committee was tasked with determining whether entering into a compact would result in retention of surplus lines tax revenue for the State and, if so, which compact or agreement would result in the most retention of surplus lines tax revenue and the most cost-efficient method of administering the collection and distribution of tax revenues.

At its November 5, 2012, meeting, the Committee heard a presentation on this issue from Rose Vaughn-Williams, Legislative Counsel for the Department of

[8] G.S. 58-21-85.

[9] Prior to July 21, 2011, surplus lines brokers paid surplus lines taxes to each state where the insured company had covered property in addition to the insured's home state based on the insurance premiums generated in each state. Beginning July 21, 2011, surplus lines brokers are required to pay the home state of the insured all of the surplus lines tax from all of the business that the surplus lines company does around the country.

Insurance. The presentation was informational so that the members would be prepared to address any policy options that might be recommended by the Department at a later time. Prior to the final meeting, however, the Department reported to committee staff that there is no compact that is currently operational and, therefore, any decision about joining one would be premature. The National Association of Professional Surplus Lines office reports that 28 states have no current plans for participating in tax-sharing arrangements, including states that account for the largest amount of surplus lines tax revenue.[10] The Department further reported that the data currently shows no significant loss to North Carolina on collection of the surplus lines tax from domestic insurers that can be directly attributed to the enactment of the NRRA, which became effective on July 21, 2011. Consequently, the Department recommends that the State take no action at this time. The Department will continue to monitor the tax revenues and will report to the Committee if there is a change.

COMBINED REPORTING AND INTERPRETATION OF TAX LAWS

For more than a decade, the General Assembly has grappled with the laws concerning the taxation of a multistate corporation's income. In North Carolina, a corporation with subsidiaries files a tax return for each subsidiary; this form of reporting is known as separate entity reporting. Under separate entity reporting, a corporation with subsidiaries determines its State net income as if a separate return had been filed for each subsidiary for federal income tax purposes. Separate entity filing gives corporations with subsidiaries in multiple states the ability to devise ways to shift income from a high effective tax rate state to a low effective tax rate state, often through inter-company transactions. The General Assembly has enacted several changes to the

[10] New York, California, and Texas.

State's corporate income tax laws to address the shifting of income between states by multistate corporations.[11] Although several study committees[12], including the Revenue Laws Study Committee[13], recommended the General Assembly consider changing how a corporation determines its net income for corporate income tax purposes from single-entity reporting to mandatory combined reporting[14], the General Assembly never considered the change.

The State has also grappled with the administration of the laws concerning the taxation of a multistate corporation's income. Beginning in the mid-1990s, the Department of Revenue began to more aggressively audit multistate corporations and require them to file a consolidated return when the Department believed the corporation's net income attributable to this State was not accurately reflected on its separate entity return. This action by the Department is referred to as *forced combination.* The Department has used forced combinations for a number of years and collected more than $200 million in taxes.

Taxpayers, seeking clarity on the law, filed lawsuits contesting the Department's authority to use force combinations. Taxpayers contended that the statutes the Department relied upon to force combinations were vague and that the absence of any guidance from the Department left taxpayers uncertain as to when a combined report was required, who was required to be included in the combined report, or how the combination was to be accomplished. In 2008, the trial court affirmed the Department's assessment based on forced combination of Wal-Mart and several affiliates. The North

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[11] S.L. 2001-327; Section 30G.1 of S.L. 2002-126; Section 24A.3 of S.L. 2006-66.

[12] 2002 Governor's Commission to Modernize State Finances; 2008 State and Local Fiscal Modernization Commission.

[13] 2007 Session, House Bill 462 and Senate Bill 244.

[14] Under mandatory combined reporting, a corporation that is part of an affiliated group engaged in a single trade or business would file a combined report.

Carolina Court of Appeals affirmed the trial court's decision in 2009[15] and Wal-Mart chose to settle the case, abandoning its appeal to the Supreme Court.

In 2009, under the auspices of the Wal-Mart decision, the Department began a collection effort known as the "Resolution Initiative." As part of that initiative, the Department imposed significant penalties[16] when a corporation failed to file a combined return, even though G.S. 105-130.14 prohibited a corporation from filing a consolidated or combined return in North Carolina unless specifically directed to do so by the Secretary of Revenue. The Department entered into agreements with at least 130 corporate taxpayers. It appeared some of those taxpayers settled with the Department in order to have the costly penalties waived. In response to this Departmental practice, the General Assembly enacted legislation[17] providing that the Department could not assess penalties for failure to file a combined return unless the Secretary adopted permanent rules describing the specific facts and circumstances under which the Secretary would require a corporation to file a consolidated or combined return.[18] Following the legislative action in the summer of 2010, the Business Court struck down the penalties imposed by the Department on Delhaize,[19] finding that the penalties had "significant coercive power" which in these circumstances "violated due process" and exceeded the Secretary's statutory authority.[20]

In the Delhaize case, the Business Court found that the Department worked actively to conceal the standards its decision makers were using when exercising its

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[15] *Wal-Mart Stores East, Inc. v. Hinton,* 197 N.C. App. 30 (2009).

[16] G.S. 105-236 includes a failure to file penalty of 5% to 25%, a failure to pay penalty of 10%, a negligence penalty of 10%, and a large understatement penalty of 25%.

[17] Section 31.10 of S.L. 2010-31. G.S. 105-236(a)(5) and 105-262(b).

[18] The Department of Revenue never adopted rules on this issue.

[19] *Delhaize America Inc. v. Lay,* 06 CVS 08416 (Wake County Superior Court, Jan. 12, 2011).

[20] Section 31.10(g) of S.L. 2010-31 specified that the law did not apply to pending cases. In *Delhaize,* the Court found that it would be unjust to impose a penalty on Delhaize when the penalty structure had been amended in 2010 to require the issuance of rules before penalties could be imposed.

authority to combine returns. In response to this issue, the General Assembly repealed the statutes[21] that allowed the Secretary to re-determine the net income of a corporation if the Secretary found that a report by the corporation did not reflect its true earnings from its business carried on in this State. In its place, the General Assembly provided that the Secretary may only make this redetermination if the Secretary finds the corporation fails to accurately report its State net income through the use of transactions that lack economic substance or are not at fair market value.[22] The more restricted interpretation became effective for taxable years beginning on or after January 1, 2012. The legislation[23] directed the Revenue Laws Study Committee to recommend whether the law should be made applicable retroactively.

The Revenue Laws Study Committee discussed the issue of retroactivity at its meeting on November 2, 2011. The Committee considered the issues a retroactive effective date may raise: To whom would it apply? What would be its impact on current agreements? Would it result in treating similar taxpayers differently? Would there be unforeseen legal consequences? The Committee chose not to make any recommendation on the retroactive application of G.S. 105-130.5A.

The Department of Revenue issued the first Corporate Tax Directive[24] it has issued since 2008 on the Secretary's authority to require a corporation to file a combined return. The Department divided the 19-page directive into two parts. The first part concerns tax years beginning prior to January 1, 2012. This part of the directive discusses the Department's interpretation of the law as it applied to taxpayers under G.S. 105-130.6, 105-130.15, and 105-130.16 and appears to set forth the Department's

[21] G.S. 105-130.6, 105-130.15, and 105-130.16.
[22] G.S. 105-130.5A.
[23] S.L. 2011-390, as amended by S.L. 2011-411.
[24] Corporate Income Tax Directives Table of Contents

application of the law as upheld by the North Carolina Courts.[25] The second part of the directive sets forth how the Department plans to apply the new law, effective for assessments proposed for taxable years beginning on or after January 1, 2012. The Department described the Directive to the Committee at its November 2, 2011, meeting and presented the Directive to it at the Committee's December 7, 2011, meeting.[26] Representatives on behalf of the North Carolina Chamber of Commerce, the North Carolina Retail Merchants Association, and the Council on State Taxation appeared before the Committee on March 7, 2012, and expressed concern that the Directive issued by the Department did not provide clarity to the law, exceeded the Department's statutory authority, and did not undergo the formal rule-making process.[27]

Throughout the hearings, the Committee expressed strong concerns on the need for the Department to provide clarity on the law for taxpayers and to execute the law as enacted. The Committee began examining the way the Secretary of Revenue interprets the law at its meeting on March 7, 2012. The tax laws in Chapter 105 of the General Statutes contain two statutes that appear to give the Department two different pathways of interpreting the law.

Under G.S. 105-264, the Secretary may interpret a law by adopting a rule *or by publishing a bulletin or directive* on the law. The Department has interpreted tax law through the issuance of bulletins[28] or directives[29] since at least 1955. This process does

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[25] *Wal-Mart Stores East v. Hinton*, 197 N.C. App. 30 (2009); *Delhaize America, Inc., Plaintiff, v. Kenneth R. Lay*, 2011 NCBC 2: 2011 NCBC LEXIS 9 (2011).

[26] The Department of Revenue later revised its directive and separated it into two directives, published April 19, 2012. CD-12-01 and CD-12-02. See footnote 14 for a link to the bulletins.

[27] North Carolina General Assembly - Revenue Laws > Meeting Documents > 2011-2012 Meeting Documents > March 7

[28] Bulletins present the Department of Revenue's administrative interpretation and application of tax laws. The Department has 'Corporate, Excise, and Insurance Tax Bulletins', 'Individual Income Tax Bulletins', and 'Sales and Use Tax Bulletins'. The Department typically updates the bulletins annually to reflect changes in the law or administrative interpretation. However, the Department has not updated the bulletins in the last three or four years.

[29] Directives are issued by the Department of Revenue on an as-needed basis to interpret a tax law, explain the application of law to stated facts, or to clarify an issue on which the Department has received numerous questions.

not involve public notice and comment or approval by any outside authority. Bulletins and directives may be issued immediately. A directive or bulletin is not considered a binding interpretation on the courts.

Under G.S. 105-262, the Secretary may adopt rules under Chapter 150B. The Department is exempt from the notice and hearing provisions of Part 2 of Article 2A of Chapter 150B. Although the rule-making process does not provide an opportunity for public notice and hearing for rules adopted by the Department, it does provide a review of the rules by the Rules Review Commission. The Commission reviews rules to ensure they do not exceed an agency's statutory authority. A rule is considered a binding interpretation on the courts. The definition of a rule in G.S. 150B-1 specifically states that a rule does not include nonbinding interpretative statements that merely define, interpret, or explain the meaning of a statute or rule and that a rule does not include statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections.

The Committee expressed a strong desire for the Department to provide guidance through the rulemaking process, especially on the issue of forced combinations. The Department voiced strong concerns about its ability to effectively and efficiently administer the tax laws if it had to undertake rulemaking for all of the guidance it provided. In the debate, the Committee identified three goals:

- The need for taxpayer certainty about the tax laws.
- The need for an outside determination as to whether the Department has exceeded its statutory authority in its interpretation of the law.

Directives are not updated to reflect changes in the law or administrative interpretation. The contents of a directive may be included in an updated bulletin.

- The opportunity for public notice and comment on the Department's interpretation of the law.

Legislative Proposal #1 seeks to balance these three goals. It requires the Secretary to adopt rules providing guidance to taxpayers on its administration of G.S. 105-130.5A, the newly enacted law regarding the Secretary's ability to re-determine a corporation's State net taxable income by adjustment or by forced combination. The Committee plans to give further consideration during the next interim as to whether the Secretary must adopt rules providing guidance on its administration in other tax areas.

To expedite the rulemaking process, Legislative Proposal #1 does the following:

- It provides the rulemaking procedure will be the quicker timetable allowed for temporary rulemaking. This process allows 15 days for notice and comment from outside parties. Anyone may object to a proposed or adopted rule by requesting review by the Rules Review Commission. If no one requests review by the Rules Review Commission, the adopted rule may be delivered to the Codifier of Rules and entered into the Code. If the Department receives written objections to the rule and requests that the rule be reviewed, then the Rules Review Commission must review the rule within 15 days. The Commission may not extend the period of time for review.
- It changes the fiscal note requirement to allow the Department to prepare its own fiscal note.[30] It will not need to submit the fiscal note to Office of State Budget and Management. The fiscal note must be submitted with the proposed rule to the Codifier of Rules and posted on the Internet. A person

[30] A fiscal note must be prepared if the rule has a substantial economic impact. Prior to 2011, the term 'substantial economic impact' meant a cumulative impact of $3,000,000. In 2011, this amount was reduced to $500,000.

may comment on the fiscal note in the same manner a person may comment on a proposed rule.[31]

- It exempts the Department from the delayed effective date provisions that apply whenever the Commission receives 10 or more objections to a rule requesting review by the legislature.

Appendix D contains a chart that summarizes the procedure outlined in Legislative Proposal #1.

NORTH CAROLINA ESTATE TAX

In 2001, all 50 states and the District of Columbia imposed an estate tax when an individual died on the value of the individual's accumulated assets.[32] In 2012, North Carolina, 21 other states, and the District of Columbia impose an estate tax. The Committee heard presentations by groups seeking the repeal of NC's estate tax and groups supporting the estate tax during meetings held January 4, 2012, and March 7, 2012.

For decedents dying in 2012, North Carolina imposes an estate tax on the value of the estate over $5 million. The tax rate is graduated from 0.8% to a maximum rate of 16% for taxable estates over $10,040,000. Among the states imposing an estate tax, North Carolina allows the largest exemption at $5 million. For the 2009-2010 fiscal year, the NC estate tax represented 0.39% of General Fund tax revenue.[33]

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[31] The proposal provides that the Department does not need to provide a fiscal note for a proposed rule it publishes before December 31, 2012. See Section 4 of the proposal.

[32] The State's largest tax schedules are based on income taxed on a yearly basis (i.e., individual income tax and corporate income tax) and consumption taxed at the time of sale or use (i.e., sales and use tax). The estate tax is a tax on past economic activity, and the larger tax schedules are taxes based on ongoing economic activity.

[33] The NC estate tax collected over $100 million in General Fund tax revenue in fiscal years 2001-2009. North Carolina followed federal law and did not impose an estate tax in the calendar year 2010. Collections from the NC estate tax are projected to return to $92 million during the 2012-2013 fiscal year, as collections recover from the lapse of the estate tax in 2010.

The federal estate tax dates to 1797 and was historically imposed by the federal government to fund wars. In modern times, the NC estate tax has followed the federal estate tax in exemption amounts and definition of the tax base. The federal estate tax laws have changed yearly since 2001.

In 2001, the federal estate tax was designed as a revenue sharing system where the federal estate tax gave estates a 100% credit for state estate tax.[34] Because estates received a full credit for state estate tax imposed, the estates did not pay any additional estate tax if state estate tax also applied.

In 2012, the federal estate tax allows only a deduction for state estate tax.[35] Because the deduction did not relieve estates of the financial loss of paying state estate tax, estates do pay additional estate tax if state estate tax applies. The federal estate tax is scheduled to return to the 2001 law with a $1 million federal exemption for decedents dying after December 31, 2012. In 2013 and later years, federal law again allows the 100% credit for state estate tax.

Assuming that federal law does not change, repealing the NC estate tax would not benefit NC estates in 2013 and later years because the credit for state estate tax offsets federal estate tax - resulting in the same total estate tax due with or without a state estate tax.

The Committee did not make any legislative recommendations related to this topic.

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[34] A tax credit offsets a tax liability dollar for dollar (i.e., by the same amount). For example, a $1 credit relieves a taxpayer of $1 in tax making a tax credit worth the same dollar amount as the credit.

[35] A tax deduction offsets income subject to tax (i.e., reduces the amount of income multiplied by a tax rate). For example, assuming a 16% tax rate, a $1 deduction relieves a taxpayer of $0.16 in tax making a tax deduction worth the tax rate multiplied by the dollar amount of the deduction.

UNEMPLOYMENT INSURANCE PROGRAM

The State Unemployment Trust Fund (Trust Fund) provides benefits to people who have lost their jobs through no fault of their own. The revenues for the Fund come from the imposition of payroll taxes, commonly called *contributions,* on employers. North Carolina's unemployment tax (SUTA) rate varies from 0% to 6.84% based upon the employer's experience rating and is imposed on wages up to $20,400[36] for the 2012 taxable year. The contributions paid by employers to the Trust Fund may only be used to pay claimant benefits. In addition to the payroll tax, the State imposes a tax on contributions at the rate of 20% of the contributions due in any calendar year when the Employment Security Reserve Fund does not equal or exceed $163,349.000.[37] The revenue from this tax is credited to the Reserve Fund and its use is not restricted.

In addition to the SUTA, employers pay a federal unemployment tax (FUTA). The FUTA tax rate is 6% and is imposed on wages up to $7,000 a year. Federal law provides a credit against the tax liability of up to 5.4% to employers who pay state taxes timely under an approved state unemployment insurance program. The credit against the federal tax may be reduced if the state has an outstanding loan amount. When states lack the funds to pay unemployment insurance benefits, they may obtain a loan, or an *advance,* from the federal government. To assure the loans are repaid, federal law provides that when a state has an outstanding loan balance on January 1 for two consecutive years, the full amount of the loan must be repaid before November 10 of the second year or the credit available to employers will be reduced 0.3% a year until the loan is repaid.

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[36] This amount is indexed annually.

[37] G.S. 96-9(b)(3)j. The Reserve Fund has fallen below this amount since the 2005 calendar year.

North Carolina received its first advance from the federal treasury to finance the benefits payable from the Trust Fund in February 2009.[38] Interest did not begin accruing on the loan until January 1, 2011, because Congress waived interest payments due from states on any advances through December 31, 2010.[39] North Carolina paid its first interest payment of $78.8 million on an outstanding loan amount of $2.5 billion in September 2011. The State made the interest payment from funds available in the Employment Security Reserve Fund. The State needed to repay the loan amount by November 2011 to avoid a FUTA credit reduction of 0.3%, which it was unable to do. The effective FUTA tax rate for North Carolina employers for the 2012 calendar year increased from 0.6% to 0.9%. The increase equals approximately $21 per employee for a FUTA tax rate of approximately $63 per employee.

The choice North Carolina will have to make is not whether the unemployment insurance tax rate employers pay will increase but rather what is the optimal way to address the State's unemployment insurance issues while minimizing the impact on job growth and unemployed workers. The General Assembly enacted Senate Bill 99 this past session.[40] Senate Bill 99 directed the Department of Commerce to contract with an independent consulting firm specializing in unemployment insurance and employment security reform. The purpose of the contract is to obtain recommendations on what tax structure changes would be fair to employers and how these revenues and other financial options might be used in servicing and liquidating the State debt incurred to pay unemployment insurance benefits. The act exempted Commerce from the purchase and contract requirements in regards to this consulting contract in an attempt to

[38] As of March 29, 2012, North Carolina has an outstanding loan balance of $2.8 billion. Thirty states have an outstanding loan from the Federal Unemployment Account. Only three states have a larger loan balance than North Carolina: California, New York, and Pennsylvania.
[39] American Recovery and Reinvestment Act of 2009, P. L. 111-5, approved February 17, 2009.
[40] S.L. 2011-10.

expedite the study. Although Senate Bill 99 became law on March 25, 2011, the contract had not been let by December 2011.

The Revenue Laws Study Committee asked the Department of Commerce to appear before it and give a status report on both the consulting contract and the merger of the Employment Security Commission with the Department of Commerce.[41] Dale Carroll, the Deputy Secretary of Commerce, appeared before the Committee on December 7, 2011, and discussed the merger objectives and implementation. He also explained that the RFP bidding process was complete for the unemployment insurance tax reform consulting contract and the Department was reviewing the bids and the process. The Committee again looked at these issues on January 4, 2012. It subpoenaed Lynn Holmes, the former Commissioner of the Employment Security Commission and the Assistant Secretary of the Employment Security Division of the Department of Commerce[42], to appear before the Committee at its January meeting. A transcript of her testimony before the Committee is available on the Committee's website.[43]

After the adjournment of the 2011 Session of the General Assembly, events continued to unfold in the area of unemployment insurance law that will require action by the 2012 Session of the General Assembly. The actions required by the General Assembly in this area do not fall within the matters that may be considered as stand-alone bills introduced in the 2012 Session, as outlined in Section 4.2 of Resolution 2011-12.[44] Although some of the issues that need to be addressed in the 2012 Session fall

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[41] S.L. 2011-145 (House Bill 200), Section 14.5 and Section 14.5C, and S.L. 2011-401 (Senate Bill 532), transferred ESC to the Department of Commerce and directed the Department to enter into a contract related to employment security organizational reform.

[42] Lynn Holmes resigned as the Assistant Secretary of the Division of Employment Security, effective April 15, 2012. The Governor named Dempsey Benton as the new Assistant Secretary.

[43] North Carolina General Assembly - Revenue Laws > Meeting Documents > 2011-2012 Meeting Documents > January 4

[44] http://ncleg.net/Sessions/2011/Bills/Senate/PDF/S793v2.pdf

outside the usual parameters of the Revenue Laws Study Committee, this study committee appears to be the only joint legislative committee that has the necessary background to consider the issues and make a possible recommendation on these issues to the 2012 General Assembly.

The issues the General Assembly may wish to consider in the 2012 Session in the area of unemployment insurance law fall largely into three categories:

- The extension of the three-year look-back period from January 1, 2012, to January 1, 2013.
- The resolution of outstanding issues from Senate Bill 532, S.L. 2011-401.
- The statutory changes to the unemployment insurance laws required by the Trade Adjustment Assistance Extension Act of 2011.[45]

Extended Benefits. – There are two permanent benefit programs required by federal law: regular unemployment benefits and extended benefits.[46] Regular unemployment benefits are fully funded by the State through its State Unemployment Insurance Trust Fund and claimants in North Carolina are eligible to receive benefits for up to 26 weeks under it. Extended benefits are available in a state when the state is experiencing high levels of unemployment.[47] The program is funded 50% by state contributions and 50% by the federal government. However, the federal government has paid 100% of the extended benefit claims since February 22, 2009.[48] Under the Middle Class Tax Relief and Job Creation Act of 2012[49], the federal government will continue to pay 100% of the extended benefits through December 31, 2012.

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[45] P.L. 112-40, approved October 21, 2011.

[46] Congress enacted Emergency Unemployment Compensation in 2008, known as EUC08. These benefits are fully payable by the federal treasury.

[47] In North Carolina, a claimant may receive up to 20 weeks of extended benefits.

[48] P.L. 111-5, Sec. 2005, approved February 19, 2009, *American Recovery and Reinvestment Act of 2009*. The provision has been extended several times in other federal legislation.

[49] P.L. 112-96, approved February 22, 2012.

Extended benefits are triggered in a state when the unemployment rate is at least 6.5% and at least 10% higher than it was at the same time in either of the past two calendar years; this two-year window is known as the *two-year look-back.* In the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010[50], Congress allowed states to amend their laws to temporarily increase the two-year look-back period to a three-year look-back period. This measure enabled more states to offer extended benefits. Under the 2010 legislation, the temporary measure ended December 31, 2011. However, Congress extended the temporary measure twice.[51] The full federal funding of the extended benefits will expire December 31, 2012.

North Carolina changed the law to permit a three-year look-back in S.L. 2011-145, Section 6.16. This provision expired January 1, 2012. Legislative Proposal #2 would extend the sunset from January 1, 2012, until January 1, 2013. In North Carolina, extended benefits will not be allowed for claim weeks later than May 12, 2012, because the State's unemployment rate has fallen below the trigger. However, it is possible the extended benefits may trigger back "on" before the end of the year.

The Governor ordered the Employment Security Commission to use the three-year look-back in Executive Order 93, dated June 3, 2011. The Governor ordered the Division of Employment Security to use the three-year look-back in Executive Order 113, dated January 11, 2012. Although the Executive Orders purport to give the Governor the authority to make this change, the federal law clearly states that a "State may by law" provide for the temporary look-back extension.[52] In a letter to the Revenue Laws Study Committee, Gerry Cohen, Director of Bill Drafting, Legislative Services,

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[50] P.L.111-312, approved December 17, 2010.

[51] P.L. 112-78, approved December 23, 2011, *Temporary Payroll Tax Cut Continuation Act of 2011.* P.L. 112-96, approved February 22, 2012, *The Middle Class Tax Relief and Job Creation Act of 2012.*

[52] P. L. 11-312, approved December 2010, Sec. 502, *Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.*

NCGA, acknowledged that USDOL recognized the validity of Executive Order 93 and began the benefits extension prior to approval of the General Assembly, but opined that such actions were not authorized by either federal law or the laws of our State.[53] A copy of his letter may be found in Appendix E. Legislative Proposal #2 finds that the Governor did not have the authority under federal law, the North Carolina Constitution, or Chapter 96 of the North Carolina General Statutes to change the look-back period.

Outstanding Issues Re: S.L. 2011-401. - The General Assembly enacted Senate Bill 532 on July 26, 2012. Senate Bill 532 had four operative parts:

- It created the Division of Employment Security within the Department of Commerce and transferred the functions of the Employment Security Commission to that Division.
- It made the Division subject to rulemaking under Article 2A of chapter 150B of the General Statutes.
- It made substantive changes to the employment security laws.
- It made conforming changes to the employment security laws.

On June 30, 2011, the Governor vetoed the bill. In the Governor's Objections and Veto Message[54], she stated the U.S. Department of Labor informed the administration that a lack of conformity between the bill and federal law could result in a loss of money for the State's unemployment insurance program and a reduction in the FUTA tax credit. A state's law must conform to the provisions of the federal unemployment compensation laws in order for employers in a state to be eligible for a credit against the

[53] Cohen letter.
[54] Governor's Veto Message.

FUTA tax and for the state to be eligible to receive an administrative grant to operate its unemployment compensation programs.

The General Assembly overrode the Governor's veto on July 26, 2011. After passage of the bill, the Employment Security Commission informed the General Assembly by a letter dated October 12, 2011, of its intention to suspend the provisions of the bill determined by the U.S. Department of Labor to be noncompliant with federal law. G.S. 96-19(b) gives the Division of Employment Security the authority to suspend enforcement of a provision upon receiving notification from the U.S. Department of Labor that the provision is noncompliant with the requirements of federal law. The suspension may be in effect until the Legislature next has an opportunity to reconsider the provisions purported to be noncompliant with federal law.

Legislative Proposal #2 addresses the areas of concern noted by the U.S. Department of Labor:

- The legislation expanded the time for an employer to provide information required to protest a claim from 10 days to 30 days. The U.S. Department of Labor noted that the extension of time would make it virtually impossible for the agency to make timely determinations under the standards set by federal regulations.[55]
- An individual is totally disqualified from receiving benefits if the Division of Employment Security determines the individual was discharged for misconduct connected with the work. The legislation expanded the definition of "misconduct connected with the work" to include both of the following:

[55] For most intrastate claims, federal regulations require that a state pay at least 87% of its claims within 14 days of the end of the first compensable week, or 21 days for states that do not have a waiting week requirement, and 93% of such claims within 35 days.

- Arrest for or conviction of certain offenses. The U.S. Department of Labor noted that the new definition did not require that the criminal conduct be connected with the individual's work.
- Failure to adequately perform employment duties after being warned. The U.S. Department of Labor noted that, in order to be the basis for a disqualification to receive unemployment benefits, unsatisfactory job performance must be the result of intentional behavior or gross negligence, and must be egregious.

- The legislation allowed the parties to tender stipulation of the ultimate issues in cases pending on appeal to the agency. The U.S. Department of Labor noted that while a stipulation of facts might be acceptable, a stipulation of the issues vitiates the agency's federally-mandated responsibility to apply the unemployment law to specific facts. The Department also recommended that any procedure or process by which an appeals referee or hearing officer accepts a stipulation of fact should be recorded.

Senate Bill 532 created a Board of Review[56] to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Employment Security Section and the Employment Insurance Section. The annual salaries of the three-person board are to be set by the General Assembly in the current Operations Appropriations Act. The Current Operations and Capital Improvements Appropriations Act of 2011 did not set the salaries for the members of the Board of Review. Legislative Proposal #2 provides that the current Operations Appropriations Act of 2012 must provide for the annual salaries of the Board of Review, as provided in G.S. 96-4(b).

[56] G.S. 96-4(b).

Conformity to the Trade Adjustment Assistance Extension Act of 2011. - In 2002, the United States General Accounting Office issued a report on the unemployment insurance program and the need for an increased focus on program integrity. The focus of President Obama's Executive Order 13520, issued November 23, 2009, was the reduction of improper payments in major programs administered by the federal government, including the unemployment insurance program. In response to the level of improper payments in the unemployment insurance program, the U.S. Department of Labor developed a strategic plan to address the root causes of improper payments. The plan involves new performance measures for the states; increased funding of new tools and technology; and a focus on the root causes leading to improper payments. The three identified root causes leading to improper payments are:

- Claimants continuing to claim benefits after returning to work.
- Untimely and insufficient separation information from employers and third party administrators.
- A gap in employment service registration.

As part of the increased focus on program integrity, the U.S. Department of Labor recommended legislative language to Congress in June of 2011. In October 2011, three key integrity provisions recommended by the Department were enacted as part of the Trade Adjustment Assistance Extension Act of 2011. Legislative Proposal #2 includes the statutory change the State must make to be in conformity with federal law this year. The proposal does not include the other two changes because they do not need to be in place before October 21, 2013. The three program integrity provisions are as follows:

- New Hire Directory. - To address the gap in employment service registration, the federal law requires states to expand the definition of a "newly hired

employee" to include a rehired employee who was separated for at least 60 days. It also requires employers to enter the start date of employment when the employer submits the information to the New Hire Directory. The New Hire Directory was created years ago to assist states with the collection of child support payments. The Directory is administered by the Department of Health and Human Services. The directory is also a valuable tool for unemployment insurance programs because it allows the agency to cross-check claimants with new hires. This information assists the agency with the detection of overpayments being made to individuals who have returned to work. States are required to make the necessary statutory changes to its New Hire Directory within two months after the latest legislative session ends. Legislative Proposal #2 includes the necessary changes.

- Prohibition on Non-Charging of Employer Accounts. - To address the untimely and insufficient separation information provided by employers and third party administrators to the agencies, the federal law requires states to enact a provision prohibiting the non-charging of an employer's unemployment insurance account when an improper payment is made because of the employer's failure to respond timely or adequately to a written request for separation information. In most states, an employer's state unemployment tax rate is based upon an experience rating whereby employers that have more claims or charges against their unemployment insurance account have a higher tax rate. Under current law, benefits paid to a claimant erroneously may not be charged to the employer's account. This provision points to a trend whereby employers are expected to improve the quality of information provided to state employment agencies at the front

end of the UI claim process, rather than waiting until a hearing to provide details. Although a state may impose a stricter standard, it must impose the minimal federal standard by October 21, 2013. Legislative Proposal #2 does not include this change because it is not required to be made until October 2013.

- Monetary Penalty Assessment. - To address claimants who fraudulently continue to accept unemployment benefits after returning to work, the federal law requires states to impose a penalty on the claimant equal to 15% of the amount of erroneous overpayment if the agency determines that the overpayment is due to fraud. Under G.S. 96-18(a), a fraudulent overpayment is one that results from a person's false statement or representation *knowing* it to be false or from a person *knowingly* failing to disclose a material fact to obtain or increase a benefit received. The money collected from the penalty is payable to the State Unemployment Trust Fund and its use is limited to the payment of unemployment compensation benefits. States may enact a larger penalty amount and may use the additional amount for whatever purpose it desires. The 15% federally mandatory penalty must be in place by October 21, 2013. Legislative Proposal #2 does not include this change because it is not required to be made until October 2013.

PRIVILEGE TAX

At its February 12, 2012, meeting, Christopher McLaughlin, Assistant Professor of Public Law and Government at the UNC School of Government, provided the Committee with an overview of the local privilege license tax system and an analysis of its deficiencies. The issues associated with the privilege license tax are not new to this

Committee. The Committee previously studied this system of taxation in 2004[57] and 2008,[58] but it has yet to make any recommendations. Historically, this system of taxation has been considered an outmoded, inefficient, and arbitrary method of raising revenue largely because it places a tax burden on a limited number of businesses. It was for these reasons that the vast majority of State privilege license taxes were repealed in 1997. At the time, the prevailing thought was that changes to the local privilege tax system would soon follow, but the General Assembly has not been able to reach any consensus about what changes should be made.

Through Mr. McLaughlin's presentation, the Committee heard once again how the system is archaic, inconsistent, and arbitrary. The system is archaic because it is based on references to repealed statutes, which are essentially "trapped in time" and cannot be changed. Specifically, the repealed statutes refer to monetary caps that have never been adjusted for inflation and to businesses that sell items like record players, tape cartridges, and bagatelle tables. The Committee heard that the law is often applied inconsistently because local business license officers have different, yet valid, interpretations of how to apply the repealed statutes. The system is arbitrary because there is no rationale for exempting some businesses altogether, subjecting some to caps, and subjecting others to an unlimited amount of tax. Given these characteristics, the administration of privilege license taxes frequently proves to be a source of confusion for local governments and taxpayers alike.

When this Committee last looked at privilege license taxes, the specific concern raised by taxpayers at the time had to do with double taxation. This year, a number of businesses have raised a concern about the absence of a statutory restriction on the

[57] February 3, 2004.
[58] November 19, 2008.

amount of tax that a city may levy, particularly in those cities that have opted to levy a privilege license tax based on a business' gross receipts. Other than the types of businesses that are subject to a flat rate or cap under the repealed Schedule B, there is no statutory limitation on the amount of tax that a city may levy upon a business. In Durham, for example, the tax is $50 for retailers with up to $15,000 in gross receipts, then $0.50 per each additional $1,000 in gross receipts with no maximum. A Durham business with $50 million in gross receipts would pay a privilege tax of $25,000. The City of Charlotte has a cap on its tax, but it was recently raised from $2,000 to $10,000. In fact, Charlotte is among the highest in terms of annual revenue generated by this tax, bringing in close to $25 million in FY 2009-2010. With regard to the amount of tax, Mr. McLaughlin pointed out that the North Carolina Constitution provides that taxes must be "fair and equitable" but, generally speaking, the courts have given taxing authorities broad discretion in this area.[59] He also discussed apportionment problems that exist for businesses operating in multiple cities. That is, it can be difficult for a business to determine its gross receipts derived from a particular city for purposes of paying the privilege tax when that business may be headquartered in one city but provides services to customers in another city or multiple cities.

With regard to public remarks on this subject, the Committee heard from Andy Ellen with the Retail Merchants Association, Jim Ahler with the North Carolina Association of CPAs (Association), and Kelli Kukura with the League of Municipalities. Mr. Ellen agreed with the concerns illustrated in Mr. McLaughlin's presentation. Specifically, he provided the Committee with an example of an independent grocery

[59] In late February, the North Carolina Court of Appeals ruled in favor of the City of Lumberton regarding its authority to levy substantial privilege license taxes on internet sweepstakes businesses. In that case, four sweepstakes operators sued the city for taxing each business $5,000 per location and $2,500 per terminal. This case may be heard by the North Carolina Supreme Court, and the door is still open for a ruling on the *amount* of taxes that may be levied.

store owner whose privilege license tax went from $50 in 2009 to nearly $6,000 in 2010 because the city adopted a gross receipts schedule. Mr. Ellen also voiced the taxpayer's concern that the gross receipts method of taxation disproportionately impacts a business operating on a low profit margin.

Mr. Ahler provided the Committee with information related to efforts by the City of Charlotte to impose a local privilege license tax on CPA firms licensed by the State Board of Certified Public Accountant Examiners (Board) based upon its assertion that some consulting services offered by licensed CPA firms do not constitute accounting services and, therefore, are a separate, taxable activity. Mr. Ahler relayed that the Association does not share the City's view about the liability of CPA firms for local privilege license taxes. The Association's position, rather, is that the State's authority to levy a State privilege tax on the accounting profession is exclusive, and, therefore, the City exceeded its authority in levying the local tax.

Under G.S. 105-41, the State imposes a flat privilege license tax on persons engaged in the public practice of accounting and prohibits counties or cities from levying a license tax on this profession. Mr. Ahler pointed out that there is no mention of "separate activities" under the State statute and that consulting clearly falls within the purview of public accountancy as defined and regulated by the Board. In a subsequent communication to the Association from the City, Assistant City Attorney Thomas Powers stated that as long as a business is a CPA firm, is registered with the NC State Board of CPA Examiners as a CPA firm, and is registered with the Secretary of State as an accounting or consulting services type of business, the business is exempt from local privilege tax. These requirements do not, however, appear in G.S. 105-41. As of the date of this report, it is the Committee's understanding that the City of Charlotte is not currently pursuing licensed CPA firms that are registered with the Board for local

privilege license tax, but acknowledges the interpretational issues raised by the Association.

Finally, the Committee heard remarks from Kelli Kukura with the North Carolina League of Municipalities. Ms. Kukura informed the Committee that one of the primary benefits of the privilege tax system is that it provides a gateway for businesses. Since all businesses must obtain a license, contact with a local business license office serves as a centralized source to inform owners of the various legal requirements and other general information related to their business. However, Ms. Kukura acknowledged that the system is flawed and was in general agreement with the comments expressed at the meeting. To that end, she conveyed the League's position that it will support legislation to modernize the privilege license tax by 1) eliminating exemptions and caps for specific categories of businesses; 2) specifying the appropriate bases for the tax; 3) requiring municipalities to adopt a rate schedule that applies to all types of businesses within a municipality; 4) limiting the amount of taxes paid by businesses that have business activity within a municipality but no business location within it; and 5) capping the amount of tax that can be imposed on any single business location.

The Committee concluded that the system needs to be improved in the areas of transparency, consistency, and simplicity, but it did not recommend specific changes. However, to the extent that a number of references have been made this interim to anticipated efforts at broad modernization of the overall tax structure in 2013, it is possible that changes to the local privilege tax system could be a component of that modernization effort.

TAXATION OF SOLAR ELECTRICITY EQUIPMENT

Advances in solar energy equipment manufacturing combined with State and federal tax incentives for the equipment have allowed the production of solar energy to be cost effective and have increased demand for solar energy equipment. Due to this growing interest in solar energy, the Department of Revenue has received many questions regarding the tax treatment of solar energy equipment. The Department provided an overview of this issue at the March 7, 2012, Revenue Laws meeting.

Sales of personal property are generally subject to the sales and use tax. However, purchases of personal property for manufacturing are subject to a privilege tax under Article 5F of Chapter 105 of the General Statutes. The rate of the privilege tax is 1% of the sales price of the property, with a cap of $80. Questions have arisen as to whether solar energy equipment should be subject to the sales tax, or the privilege tax on manufacturing property.

The Department has issued a Sales and Use Tax Bulletin that provides sales of tangible personal property by "firms engaged in generating, producing or processing electric power to be distributed to consumers" are subject to the privilege tax on manufacturing equipment, and therefore, not subject to the sales tax. The tax treatment of the solar energy equipment depends on whether the purchaser of the equipment is engaged in generating electric power, and whether the electricity generated is distributed to customers. Differences in how the equipment is connected to the electric grid can lead to a significant difference in tax liability for identical solar energy equipment.

Legislation could be proposed to clarify the issue, either providing all solar energy equipment should be subject to the privilege tax on manufacturing equipment, or providing that only solar energy equipment sold to electric power companies directly

engaged in sales of electricity to consumers is subject to the privilege tax on manufacturing equipment. The Committee did not recommend any changes at this time.

SALES TAX AND PERFORMANCE CONTRACTORS

At its March 7, 2012, meeting, the Committee heard a presentation from Canaan Huie, General Counsel for the Department of Revenue, regarding the sales and use tax treatment of performance contracts. This is a complex area of sales tax law that has created confusion for many years. The issue centers on how to determine whether a certain transaction is a retail sale plus installation or a performance contract for purposes of applying the sales and use tax. Under current law, retailers are required to collect and remit sales tax on retail sales of tangible personal property, but sales tax is not collected from a customer who enters into a performance contract. Under a performance contract, the contractor agrees to furnish the necessary materials, labor, and expertise to accomplish the job; it is not a contract for the sale of specific items. Contractors are deemed to be the consumers or end-users of the tangible personal property they use in fulfilling performance contracts and, as such, are liable for payment of the applicable tax. The tax may not be added to the agreed-upon contract price as a separate charge on the invoice, but it must be included in the computation of the cost of the materials necessary to perform the contract.

While these rules may seem straightforward, there are a number of gray areas to the extent a transaction involves the provision of both tangible personal property and services. Specifically, a retailer may sell tangible personal property and also offer installation of that property, such as major appliances or high-end entertainment equipment. Generally speaking, retailers must collect sales tax on the property, but the installation services are exempt from sales tax as long as those services are separately

stated on the invoice at the time of sale. Conversely, a customer who enters into a performance contract does not owe sales tax on the property used to fulfill that contract, but rather the contractor owes sales or use tax on those items. A clear example of a performance contract would be a contract for the painting of a house or for cleaning services. The customer would not pay sales tax on the paint or the cleaning products used to complete those services.

The interpretation problems most often arise with "retailer-contractors," like the major home improvement stores, that perform the installation of major fixtures, such as cabinetry and carpeting. Over time, the Department has developed guidance through its technical bulletins, and the tax treatment is ultimately determined by looking at a number of factors, such as whether an item is sold with an installation agreement, the tenor of the agreement, if there is one, whether an item is pre-fabricated, whether an item is built on-site, and whether a specific quantity is stated in the agreement. Determining the tax consequences involves a complex and fact-specific analysis.

This issue drew particular attention in 2009 when newspaper reports revealed a long-running dispute between Lowe's and the Department of Revenue on the application of the law in this area. The report indicated that Lowe's was not collecting sales tax when it sold and subsequently installed items such as cabinets, flooring, and countertops. The Department's position is that these transactions are retail sales plus installation and that Lowe's should be collecting sales tax on the purchases but not the installation charges as long as those charges are separately stated on the customer's invoice. Lowe's position is that the transaction is a performance contract and, therefore, they are only required to pay the use tax because they are the user or consumer of that property and then that cost is factored into the "contract price" ultimately paid by the customer, but it is not a separately stated cost. While this particular taxpayer dispute

was not discussed at the meeting, largely because of taxpayer confidentiality, many members are aware that the need for clarification is due, in part, because of this dispute.

While the Department identified several possible options for the Committee to consider, including subjecting all or most services to sales and use tax, it did not have a specific recommendation. It would, however, like to see clarification in this area, especially with regard to the types of transactions that are the most problematic. The Committee did not make a recommendation on this issue, but noted that expansion of the sales tax base to include services, which would address this problem, may be discussed in the near future in the context of broader tax modernization efforts.

EXTENSION OF CERTAIN TAX PROVISIONS

At the April 11, 2012 meeting, the Committee considered a list of tax provisions that are set to expire in the next three years. The Committee anticipates comprehensive tax modernization in the 2013 session of the General Assembly. In anticipation of potential tax modernization, the Committee chose to maintain the current state of the tax code through 2014. To maintain the current state of the tax code, Legislative Proposal #3 would extend the tier one designation for seafood industrial parks and the following income tax credits and sales tax refunds:

Income Tax Credits:

- Work opportunity tax credit.
- Tax credit for constructing renewable fuel facilities.
- Tax credit for biodiesel producers.
- Article 3J tax credits.
- Tax credit for qualified business ventures.
- Tax credit for recycling oyster shells.
- Tax credit for premiums paid on long-term care insurance.

- Refundable earned income tax credit.
- Tax credit for adoption expenses.

Sales Tax Refunds:

- Passenger air carriers.
- Machinery and equipment placed in a tier one county.
- Aviation fuel of motorsports team or sanctioning body.
- Analytical services business.
- Certain industrial facilities.

REAL ESTATE APPRAISAL MANAGEMENT COMPANIES

At its April 11, 2012, meeting, the Committee considered whether out-of-state real estate appraisal management companies operating in the State are properly filing North Carolina tax returns. These appraisal management companies supervise a network of licensed appraisers who are independent contractors. Federal regulations adopted in response to the housing crisis led to the growth of appraisal management companies. The appraisal management companies are intended to increase the quality and reliability of appraisals to prevent another housing crisis.

The State began to regulate appraisal management companies in S.L. 2010-141 enacting Article 2 in Chapter 93E. This Article authorizes the North Carolina Appraisal Board (Board) to regulate appraisal management companies and requires the companies to register with the Board.

The Board has approximately 140 registered appraisal management companies. Only six of the 140 are North Carolina companies. The out-of-state companies owe State income tax on the appraisal work conducted within the State. The current registration form requires appraisal management companies to disclose information that would

allow the Department of Revenue to determine whether the companies are properly filing State income tax returns.

Legislative Proposal #4 would require the Board to report annually to the Department the following information about registered appraisal management companies: name, address, process agent if any, type of entity, employer identification number or social security number, and North Carolina Secretary of State identification number if any. The information required by the Legislative Proposal is currently disclosed when an appraisal management company registers. The Department could use the information from the Board to check the filing status of registered appraisal management companies.

REVENUE LAWS TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES

The Revenue Laws Study Committee recommends Legislative Proposal #5, Revenue Laws Technical, Administrative, and Clarifying Changes. This proposal makes several technical and clarifying changes to the revenue laws and related statutes. Many of the changes were recommendations of the Department of Revenue, including several changes related to the combined motor vehicle registration and property tax system which goes into effect July 1, 2013.

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Revenue Laws Study Committee makes the following five recommendations to the 2012 General Assembly. Each proposal is followed by an explanation and, if it has a fiscal impact, a fiscal memorandum, indicating any anticipated revenue gain or loss resulting from the proposal.

1. Expedited Rulemaking for Forced Combination
2. Unemployment Insurance Changes
3. Extend Tax Provisions
4. Appraisal Management Companies Reported to Department of Revenue
5. Revenue Laws Technical, Clarifying, and Administrative Changes

LEGISLATIVE PROPOSAL #1

EXPEDITED RULEMAKING FOR FORCED COMBINATION

LEGISLATIVE PROPOSAL #1

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2012 REGULAR SESSION OF THE 2011 GENERAL ASSEMBLY

AN ACT TO REQUIRE THE SECRETARY OF REVENUE'S INTERPRETATION OF THE LAW CONCERNING THE SECRETARY'S AUTHORITY TO ADJUST NET INCOME OR REQUIRE A COMBINED RETURN BE MADE THROUGH RULEMAKING AND TO PROVIDE AN EXPEDITED PROCESS FOR RULEMAKING ON THIS ISSUE.

SHORT TITLE: Expedited Rulemaking for Forced Combination.

PRIMARY SPONSORS:

BRIEF OVERVIEW: This Legislative Proposal would require the Department of Revenue to adopt rules regarding its interpretation of G.S. 105-130.5A, the Secretary's authority to re-determine the State net income of a corporation properly attributable to its business carried on in the State by adjusting its net income or requiring it to file a combined return. The proposal provides an expedited rule-making process for these rules.

FISCAL IMPACT:

EFFECTIVE DATE: This proposal would become effective when it becomes law.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S **D**

SENATE DRS85240-RBz-18A (03/31)

Short Title:	Expedited Rule Making for Forced Combination.	(Public)
Sponsors:	Senators Rucho, Hartsell (Primary Sponsors), Blue, Brunstetter, Clodfelter, Harrington, McKissick, Rabon, Rouzer, and Stevens.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE SECRETARY OF REVENUE'S INTERPRETATION OF THE LAW CONCERNING THE SECRETARY'S AUTHORITY TO ADJUST NET INCOME OR REQUIRE A COMBINED RETURN BE MADE THROUGH RULE MAKING AND TO PROVIDE AN EXPEDITED PROCESS FOR RULE MAKING ON THIS ISSUE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-262(b) is repealed.

SECTION 2. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-262A. Rules to exercise authority under G.S. 105-130.5A.**

(a) Purpose and Scope. – It is the policy of the State to provide necessary guidance on a timely basis to corporate taxpayers subject under G.S. 105-130.5A to have their net income adjusted or to be required to file a combined return. Except for a voluntary redetermination as allowed under G.S. 105-130.5A(c), the Secretary may not redetermine the State net income of a corporation properly attributable to its business carried on in the State under G.S. 105-130.5A until a rule adopted by the Secretary in accordance with this section becomes effective. This section provides an expedited procedure for the adoption of rules needed to administer G.S. 105-130.5A. The Secretary may not interpret G.S. 105-130.5A in the form of a bulletin or directive under G.S. 105-264.

The Secretary is exempt from G.S. 150B-21.1 through G.S. 150B-21.4 of Part 2 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited procedure for the adoption of rules as established by this section. The Secretary is exempt from Part 3 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited review procedure as established by this section.

(b) Definition. – The definitions in G.S. 150B-2 apply in this section.

(c) Fiscal Note. – The Secretary must prepare a fiscal note for a proposed new rule or a proposed change to a rule that has a substantial economic impact. The fiscal note must be submitted with the proposed rule when the rule is submitted to the Codifier of Rules, and the Codifier of Rules must publish the fiscal note with the proposed rule

on the Internet. The Secretary must accept a written comment on the fiscal note in the same manner the Secretary accepts written comments on the proposed rule. The Secretary is not subject to the fiscal note requirement under G.S. 105-262(c). For purposes of this section, a "substantial economic impact" has the same meaning as defined in G.S. 150B-21.4(b1).

(d) Adoption. – The Secretary may adopt a rule under this section by using the procedure for adoption of a temporary rule set forth in G.S. 150B-21.1(a3). The Secretary must provide electronic notification of the adoption of a rule to persons on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties, including those originally given notice of the rule making and those who provided comment on the rule. If the Secretary receives written comment objecting to the rule and requesting review by the Commission, the rule must be reviewed in accordance with subsections (e) through (i) of this section. A person may object to the rule and request review by the Commission at any point prior to the adoption of the rule and by 5:00 P.M. on the third business day following electronic notification from the Secretary of the adoption of a rule. If the Secretary receives no written comment objecting to the rule and requesting review by the Commission, the Secretary must deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the North Carolina Administrative Code upon receipt of the rule.

(e) Review. – If the Secretary receives written comment objecting to the rule and requesting review by the Commission, the Secretary must submit the rule to the Commission for review. The Commission may not consider questions relating to the quality or efficacy of the rule but must restrict its review to a determination of whether the rule meets all of the following criteria:

(1) It is within the authority delegated to the agency by the General Assembly.

(2) It is clear and unambiguous.

(3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission must consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.

(4) It was adopted in accordance with this section.

(f) Manner of Review. – When the Commission reviews a rule under this section, the time limits in subsections (b) and (b1) of G.S. 150B-21.1 apply. The Commission must review the rule to determine whether the rule meets the standards in subsection (e) of this section. The Commission must direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the rule. The staff member must make a recommendation to the Commission or its designee. The Commission's designee must be a panel of at least three members of the Commission. The staff member, Commission's designee, or the Commission may also request technical changes as allowed in G.S. 150B-21.10. In reviewing the rule, the Commission may consider any information submitted by the Secretary or another person.

(g) Objection. – If the Commission or its designee finds that the rule does not meet the standards in subsection (e) of this section and objects to the rule, the

Commission or its designee must send the Secretary a written statement of the objection and the reason for the objection within one business day. The Secretary must take one of the following actions:

(1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.

(2) Submit a written response to the Commission indicating that the Secretary has decided not to change the rule.

(h) Changes. – When the Secretary changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the Secretary a written statement of the Commission's continued objection and the reason for the continued objection.

(i) Approval. – If the Commission or its designee finds that the rule meets the standards in subsection (e) of this section, the Commission or its designee must approve the rule and deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the North Carolina Administrative Code upon receipt from the Commission or its designee.

(j) Return of Rule. – A rule to which the Commission has objected remains under review by the Commission until the Secretary decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the Secretary. When the Commission returns a rule to the Secretary in accordance with this section, the Secretary may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(k) Effective Date. – G.S. 150B-21.3 does not apply to a rule adopted under this section. A rule adopted under this section becomes effective on the last day of the month the Codifier of Rules enters the rule in the North Carolina Administrative Code."

SECTION 3. G.S. 150B-1(d)(4) reads as rewritten:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

...

(4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A. With respect to the Secretary of Revenue's authority to redetermine the State net taxable income of a corporation under G.S. 105-130.5A, the Department is subject to the rule-making requirements of G.S. 105-262A.

...."

SECTION 4. On June 30, 2011, the Governor signed into law S.L. 2011-390, House Bill 619, as passed by the General Assembly. The law repealed the Secretary of Revenue's authority to adjust a corporation's net income or require a combined return under G.S. 105-130.6, 105-130.15, and 105-130.16 and replaced it with a new authority under G.S. 105-130.5A. The Fiscal Research Division of the North Carolina General Assembly prepared a fiscal memo on House Bill 619. Therefore, notwithstanding G.S. 105-262A(c), as enacted by Section 2 of this act, G.S. 105-262(c), and Section 7 of the Budget Manual prepared by the Office of State Budget and Management, the Secretary of Revenue shall not be required to prepare a fiscal note for

a proposed new rule submitted to the Codifier of Rules under G.S. 105-262A, as enacted by this act, prior to December 31, 2012.

SECTION 5. On April 17, 2012, the Department of Revenue published a directive pursuant to G.S. 105-264, CD-12-02, that explains the Secretary's authority under G.S. 105-130.5A to redetermine a corporation's net income by adjusting the corporation's intercompany transactions or requiring a corporation to file a combined income tax return for tax years beginning on or after January 1, 2012. This act supersedes the Directive; however, a taxpayer who relied upon the interpretation in the Directive and whose North Carolina taxable income for the 2012 taxable year is less under the Directive's interpretation than under an interpretation of G.S. 105-130.5A by a rule adopted pursuant to G.S. 105-262A, as enacted by this act, is entitled to rely on the interpretation under the Directive for the 2012 taxable year.

SECTION 6. S.L. 2011-390, as amended by S.L. 2011-411, enacted G.S. 105-130.5A, effective for taxable years beginning on or after January 1, 2012. The Secretary of Revenue's authority under G.S. 105-130.5A exists continuously for taxable years beginning on or after January 1, 2012. G.S. 105-262A, as enacted by Section 2 of this act, prevents the Secretary from exercising the authority granted under G.S. 105-130.5A until a rule adopted in accordance with G.S. 105-262A becomes effective. After the rule becomes effective, the Secretary may issue a proposed denial of a refund or a proposed assessment under the authority of G.S. 105-130.5A for any taxable year beginning on or after January 1, 2012, subject to the applicable statute of limitations.

SECTION 7. This act is effective when it becomes law.

Bill Draft 2011-RBz-18A: Expedited Rulemaking for Forced Combination.

2011-2012 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	May 1, 2012
Introduced by:		**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	2011-RBz-18A		

SUMMARY: ***This draft requires the Department of Revenue to adopt rules regarding its interpretation of G.S. 105-130.5A, the Secretary's authority to redetermine the State net income of a corporation properly attributable to its business carried on in the State by adjusting its net income or requiring it to file a combined return. The draft provides an expedited rule-making process for these rules.***

CURRENT LAW: The tax laws in Chapter 105 of the General Statutes contain two statutes that appear to give the Department of Revenue two different pathways of interpreting the law:

- G.S. 105-264 – It provides the Secretary may interpret a law by adopting a rule *or by publishing a bulletin or directive* on the law. The Department has interpreted tax law through the issuance of bulletins[1] or directives[2] since at least 1955. This process does not involve public notice and comment or approval by any outside authority. Bulletins and directives may be issued immediately. A directive or bulletin is not considered a binding interpretation on the courts.
- G.S. 105-262 – It provides the Secretary may adopt rules under Chapter 150B. The Department is exempt from the notice and hearing provisions of Part 2 of Article 2A of Chapter 150B. Although the rule-making process does not provide an opportunity for public notice and hearing for rules adopted by the Department, it does provide a review of the rules by the Rules Review Commission (RCC). The RCC reviews rules to ensure they do not exceed an agency's statutory authority. A rule is considered a binding interpretation on the courts. The definition of a rule in G.S. 150B-1 specifically states that a rule does not include nonbinding interpretative statements that merely define, interpret, or explain the meaning of a statute or rule and that a rule does not include statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections.

BILL ANALYSIS: *Legislative Proposal #1* would require the Department of Revenue to adopt rules before it could exercise the authority under G.S. 105-130.5A[3] to redetermine the

[1] Bulletins present the Department of Revenue's administrative interpretation and application of tax laws. The Department has 'Corporate, Excise, and Insurance Tax Bulletins', 'Individual Income Tax Bulletins', and 'Sales and Use Tax Bulletins'. The Department typically updates the bulletins annually to reflect changes in the law or administrative interpretation. However, the Department has not updated the bulletins in the last three or four years.

[2] Directives are issued by the Department of Revenue on an as-needed basis to interpret a tax law, explain the application of law to stated facts, or to clarify an issue on which the Department has received numerous questions. Directives are not updated to reflect changes in the law or administrative interpretation. The contents of a directive may be included in an updated bulletin.

[3] S.L. 2011-390, as amended by S.L. 2011-411, repealed the statutes that allowed the Secretary to redetermine the net income of a corporation if the Secretary found that a report by the corporation did not reflect its true earnings

State net income of a corporation properly attributable to its business carried on in the State by adjusting its net income or requiring it to file a combined return. The proposal does not extend the rulemaking requirement to all interpretations of the tax laws by the agency because there did not appear time to address the issues a larger proposal would entail:

- A clear understanding of what interpretations would require a rule. The current definition of a rule does not include nonbinding interpretative statements or statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits. Arguably, the Department's bulletins would fall within these exceptions to the definition of a rule in Chapter 150B.
- A clear understanding of the status of the bulletins and directives that currently exist. Would they all have to be adopted through the rulemaking process? Would they be grandfathered into effectiveness? Do they meet the definition of a rule? Do they need to be published in the North Carolina Administrative Code (Code)?

Throughout the course of the Revenue Laws Study Committee meetings on the implementation of G.S. 105-130.5A, the members expressed strong concerns on the need for the Department to provide clarity on the law for taxpayers and to execute the law as enacted. In response to the change in the law and the legislative concern on the interpretation of the law, the Department issued the first Corporate Tax Directive[4] it has issued since 2008. Representatives on behalf of the North Carolina Chamber of Commerce, the North Carolina Retail Merchants Association, and the Council on State Taxation appeared before the Committee on March 7, 2012, and expressed concern that the directive issued by the Department did not provide clarity to the law, exceeded the Department's statutory authority, and did not undergo the formal rule-making process.[5] The Department of Revenue expressed concern about the length of the rule-making process.

This proposal seeks to balance the following three goals:

- The need for taxpayer certainty about the tax laws.
- The need for an outside determination as to whether the Department of Revenue has exceeded its statutory authority in its interpretation of the law.
- The opportunity for public notice and comment on the Department's interpretation of the law.

The proposal provides the rulemaking procedure will be the quicker timetable allowed for temporary rulemaking. This process may be completed in less than two months. This process allows 15 days for notice and comment from outside parties. Anyone may object to a proposed rule during the notice and comment period or within three business days of the adoption of the rule by requesting review by the RRC. To ensure that all parties have knowledge of the adoption of a rule, the proposal requires the Department to provide electronic notification of its adoption of a rule to persons on the mailing list, those originally given notice of the rulemaking, and those who provided comment on the rule. If no one requests review by the RRC, the adopted rule may be delivered to the Codifier of Rules and entered into the Code. If the Department receives written objections to the rule and requests that the rule be reviewed,

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from its business carried on in this State. In their place, the General Assembly enacted a more restrictive interpretation in G.S. 105-130.5A. Effective for taxable years beginning on or after January 1, 2012, the Secretary must find that the corporation fails to accurately report its State net income through the use of transactions that lack economic substance or are not at fair market value.

[4] Corporate Income Tax Directives Table of Contents

[5] North Carolina General Assembly - Revenue Laws > Meeting Documents > 2011-2012 Meeting Documents > March 7

then the RRC must review the rule within 15 days. The RRC may not extend the period of time for review. As provided in G.S. 150B-21.9, the RRC does not consider questions relating to the quality or efficacy of the rule, but limits its review to the following:

- Is the rule within the authority delegated to the agency?
- Is it clear and unambiguous?
- Is it reasonably necessary to implement or interpret an act of the General Assembly or of Congress or of a regulation of a federal agency?
- Was it adopted in accordance with G.S. 105-262A?

The proposal changes the fiscal note requirement to allow Revenue to prepare its own fiscal note.[6] It will not need to submit the fiscal note to the Office of State Budget and Management. The fiscal note must be submitted with the proposed rule to the Codifier of Rules and posted on the Internet. A person may comment on the fiscal note in the same manner a person may comment on a proposed rule. Section 4 of the bill provides that the Department does not need to prepare a fiscal note for a proposed rule submitted to the Codifier of Rules prior to December 31, 2012. The reason for this waiver is that any rules submitted before the end of this calendar year under the statute created by this act is limited to the Department's application of G.S. 105-130.5A. The subject of the rule has been debated in the General Assembly during the 2011 session, where the Fiscal Research Division prepared a fiscal memo, and it has been the subject of four Revenue Laws Study Committee meetings in 2011 and 2012. The fiscal issues surrounding this particular rule appear to be well known and understood by all the parties.

The proposal exempts the Department from the delayed effective date provisions that apply whenever the Commission receives 10 or more objections to a rule requesting review by the legislature.

A rule becomes effective on the last day of the month the Codifier of Rules enters the rule in the Code. This effective date provision differs from the general effective date provision in Chapter 150B[7] and enables the rule to become effective a month earlier. Section 6 of the draft clarifies that the Secretary's authority under G.S. 105-130.5A exists continuously for taxable years beginning on or after January 1, 2012. After a rule becomes effective, the Secretary may issue a proposed denial of a refund or a proposed assessment under the authority of G.S. 105-130.5A for any taxable year that beginning on or after January 1, 2012.

The proposal only applies to G.S. 105-130.5A. It does not apply to the Secretary's interpretations of the repealed statutes that continue to be applicable for taxable years beginning before January 1, 2012: G.S. 105-130.6, 105-130.15, and 105-130.16. The Department has issued a directive offering guidance on its interpretation of those laws, CD-12-01, and the directive appears to set forth the Department's application of the law as upheld by the North Carolina Courts.[8] The Department has also issued a directive offering guidance on its interpretation of the newly enacted law, G.S. 105-130.5A, in CD-12-02. Section 5 of the bill provides that a taxpayer who relied upon the interpretation in that Directive and whose North Carolina taxable income for the 2012 taxable year is less under the Directive's interpretation than under an interpretation adopted through the rulemaking process may rely on the interpretation under the Directive for the 2012 taxable year.

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[6] A fiscal note must be prepared if the rule has a substantial economic impact. Prior to 2011, the term 'substantial economic impact' meant a cumulative impact of $3,000,000. In 2011, this amount was reduced to $500,000.

[7] G.S. 150B-21.3 provides that a rule becomes effective on the first day of the month following the month the rule is approved.

[8] *Wal-Mart Stores East v. Hinton*, 197 N.C. App. 30 (2009); *Delhaize America, Inc., Plaintiff, v. Kenneth R. Lay*, 2011 NCBC 2: 2011 NCBC LEXIS 9 (2011).

EFFECTIVE DATE: The proposal would become effective when it becomes law.

2011-RBz-18A-SMRB-116 v1

LEGISLATIVE PROPOSAL #2

UNEMPLOYMENT INSURANCE CHANGES

LEGISLATIVE PROPOSAL #2

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2012 REGULAR SESSION OF THE 2011 GENERAL ASSEMBLY

AN ACT TO MAKE CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS.

SHORT TITLE: Unemployment Insurance Changes

PRIMARY SPONSORS:

BRIEF OVERVIEW: This Legislative Proposal includes several changes to the unemployment laws that fall within these three categories:

- The extension of the three-year look-back period from January 1, 2012, to January 1, 2013.
- The resolution of outstanding issues associated with S.L. 2011-401, Senate Bill 532.
- The statutory changes required to comply with the federal Trade Adjustment Assistance Extension Act of 2011.

FISCAL IMPACT:

EFFECTIVE DATE: Except as otherwise provided, this act becomes effective when it becomes law.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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BILL DRAFT 2011-RBz-20 [v.9] (03/31)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/1/2012 12:56:28 PM

Short Title: Unemployment Insurance Changes. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS.

The General Assembly of North Carolina enacts:

PART I. CHANGE THE LAW TO CONTINUE THE THREE-YEAR LOOK-BACK TRIGGER FOR EXTENDED BENEFITS

SECTION 1.(a) The General Assembly finds that the Governor's Executive Order No. 93, entitled "Extend Unemployment Benefits to Protect the Safety, Health, and Welfare of North Carolina's Long-Term Unemployed", was the purported basis for action by the then Employment Security Commission to provide for the extension of unemployment benefits to thousands of North Carolinians. The extension of unemployment benefits was grounded upon amendments to Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 (the "1970 Act"), as amended by Section 502(b) of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "2010 Act").

SECTION 1.(b) The General Assembly finds that the Governor's Executive Order 113, entitled "Further Extend Unemployment Benefits to Protect the Safety, Health, and Welfare of North Carolina's Long-Term Unemployed" was the purported basis for action by the then Employment Security Commission to provide for the extension of unemployment benefits to thousands of North Carolinians nearing the end of a two-month, federal extension of unemployment benefits under Section 201 of the Temporary Payroll Tax Cut Continuation Act of 2011. That extension, authorized through February 29, 2012, was grounded upon amendments to Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 (the "1970 Act"), as amended by Section 502(b) of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "Tax Relief Act of 2010").

SECTION 1.(c) The General Assembly finds that Section 502(b) of the Tax Relief Act of 2010 specifies that the extension of benefits is to be made only as "the State may by law provide." Section 205(f) of the underlying 1970 Act defines "State law" as the "unemployment compensation law of the State, approved by the [U.S.

Secretary of Labor]." In North Carolina, that law is Chapter 96 of the General Statutes, the "Employment Security Law." Nothing in Chapter 96 of the General Statutes, then or now, authorizes the Governor to extend unemployment benefits by Executive Order, nor does Executive Order 93 or Executive Order No. 113, or any other such order, constitute a "State law" within the meaning of the 1970 Act or the North Carolina Constitution. Article II Section 1 of our State Constitution provides that "The legislative power of the State shall be vested in the General Assembly. Further, Article I, Section 6 of our State Constitution provides that the legislative and executive powers are "...separate and distinct..."

SECTION 1.(d). The General Assembly finds that the people of this State entrusted the creation of laws to the General Assembly, not to the executive branch, and that Executive Order No. 93 and Executive Order No. 113 were issued and acted upon by the executive branch in a manner contrary to the rule of law.

SECTION 1.(e) Further, the General Assembly finds that it enacted Section 6.16 of Session Law 2011-145 and in so doing validated the effects of the Governor's Executive Order No. 113, with the stated intent to allow extended benefits to be paid under the Tax Relief Act of 2010 so long as payment of the extended benefits did not hinder the State's ability to reduce its debt owed to the federal government for unemployment benefits.

SECTION 1.(e) It is deemed, therefore, to be in the best interest of the people of this State that the General Assembly now ratify and hereby validate the effects of the Governor's Executive Order No. 113.

SECTION 1.(f) To maintain the rule of law with respect to State and federal relations pertaining to employment security laws in North Carolina, any executive order issued by the Governor that purports to extend unemployment insurance benefits, whether those benefits will be paid from federal or State funds, is void ab initio, unless the executive order is issued upon authority that is conferred expressly by an act enacted by the General Assembly or granted specifically to the Governor by the Congress of the United States.

SECTION 1.(g) Section 6.16(d) of S.L. 2011-145 reads as rewritten:

"**SECTION 6.16.(d)** This section becomes effective April 16, 2011, and expires ~~January 1, 2012.~~January 1, 2013."

SECTION 1.(h) G.S. 96-12.01(a1)(4)c.3. reads as rewritten:

"3. This section applies as provided under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) as it existed on December 17, 2010, and is applicable to compensation for weeks of unemployment beginning after December 17, 2010, and ending on or before ~~December 31, 2011,~~ December 31, 2012, provided that:

I. The average rate of (i) insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in all of the preceding three calendar years and equaled or exceeded five percent (5%) or (ii)

total unemployment, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent (6.5%); and

II. The average rate of total unemployment in this State, seasonally adjusted, as determined by the United States Secretary of Labor, for the three-month period referred to in this subsection, equals or exceeds one hundred ten percent (110%) of the average for any of the corresponding three-month periods ending in the three preceding calendar years."

SECTION 1.(i) G.S. 96-12.01(a1)(4)e. reads as rewritten:

"(4) There is an "on indicator" for this State for a week if the Commission determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediate preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this Chapter:

...

e. Total extended benefit amount.

...

3. This subdivision applies as provided under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) as it existed on December 17, 2010, and is applicable to compensation for weeks of unemployment beginning after December 17, 2010, and ending on or before ~~December 31, 2011,~~ December 31, 2012, provided that:

I. The average rate of total unemployment, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent (8%); and

II. The average rate of total unemployment in this State, seasonally adjusted, as determined by the United States Secretary of Labor, for the three-month period referred to in this subdivision equals or exceeds one hundred ten percent (110%) of the average for any of the corresponding three-month periods ending in the three preceding calendar years."

SECTION 1.(j) This section is effective when it becomes law and applies retroactively to January 1, 2012.

PART II. RESOLUTION OF OUTSTANDING ISSUES FROM S.L. 2011-401

SECTION 2.(a) The Current Operations Appropriations Act for the 2012-2013 fiscal year shall provide for the annual salaries of the Board of Review, as provided in G.S. 96-4(b).

SECTION 2.(b) G.S. 96-14(2) reads as rewritten:

"**§ 96-14. Disqualification for benefits.**

An individual shall be disqualified for benefits:

...

(2) For the duration of the individual's unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Division that such individual is, at the time such claim is filed, unemployed because he or she was discharged for misconduct connected with the work. Misconduct connected with the work is defined as intentional acts or omissions evincing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evincing carelessness or negligence of such degree as to manifest equal disregard.

"Discharge for misconduct connected with the work" as used in this section is defined to include but not be limited to any one or more of the following acts or conduct:

a. ~~separation~~ Separation initiated by an employer for violating the employer's written alcohol or illegal drug ~~policy; reporting~~policy.

b. Reporting to work significantly impaired by alcohol or illegal ~~drugs; consuming~~drugs.

c. Consuming alcohol or illegal drugs on employer's ~~premises; conviction~~ premises.

d. Conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said ~~employer; being~~employer.

e. Being terminated or suspended from employment after arrest or conviction for an offense involving violence, sex crimes, or illegal ~~drugs; any~~ drugs if the offense is related to or connected with an employee's work for an employer or is in violation of a reasonable work rule or policy.

f. Any physical violence whatsoever related to an employee's work for an employer, including, but not limited to, physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general ~~public; inappropriate~~public.

g. Inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work ~~environment; theft~~ environment.

h. Theft in connection with the ~~employment; forging~~employment.

i. Forging or falsifying any document or data related to employment, including a previously submitted application for ~~employment; violation~~ employment.

j. Violation of an employer's written absenteeism ~~policy; refusing~~policy.

k. Refusing to perform reasonably assigned work ~~tasks; and the failure to adequately perform any other employment duties as evidenced by~~ tasks.

l. Intentional acts or omissions evincing disregard of the employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to the employee or evincing careless or negligence of such degree as to manifest equal disregard. For purposes of this sub-subdivision, evidence that an employee has received no fewer than three written reprimands ~~received~~ in the 12 months that immediately ~~preceding~~ precedes the employee's ~~termination.~~ termination is prima facie evidence of misconduct connected with the work. ~~This~~

The phrase "discharge for misconduct connected with the work" does not include the discharge or an employer-initiated separation of a severely disabled veteran, as defined in G.S. 96-8, for any act or omission of the veteran that the Division determines are attributed to a disability incurred or aggravated in the line of duty during active military service, or to the veteran's absence from work to obtain care and treatment of a disability incurred or aggravated in the line of duty during active military service."

SECTION 2.(c) G.S. 96-15(b)(2) reads as rewritten:

"(2) Adjudication. – When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised or presented as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to the issues, including telephone conversations, and after such consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator shall be deemed the final decision of the Division unless within 30 days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to rules adopted by the Division. The Division shall be

deemed an interested party for such purposes and may remove to itself or transfer to an appeals referee the proceedings involving any claim pending before an adjudicator.

Provided, any interested employer shall be allowed ~~30~~10 days from the ~~earlier of mailing or~~ delivery of the notice of the filing of a claim against the employer's account to protest the claim and have the claim referred to an adjudicator for a decision on the question or issue raised. A copy of the notice of the filing shall be sent contemporaneously to the employer by telefacsimile transmission if a fax number is on file. Provided further, no question or issue may be raised or presented by the Division as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, after 45 days from the first day of the first week after the question or issue occurs with respect to which week an individual filed a claim for benefits. None of the provisions of this subsection shall have the force and effect nor shall the same be construed or interested as repealing any other provisions of G.S. 96-18.

An employer shall receive written notice of the employer's appeal rights and any forms that are required to allow the employer to protest the claim. The forms shall include a section referencing the appropriate rules pertaining to appeals and the instructions on how to appeal."

SECTION 2.(d) G.S. 96-15(f) reads as rewritten:

"(f) Procedure. – The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules adopted by the Division for determining the rights of the parties, whether or not such ~~regulations~~ rules conform to common-law or statutory rules of evidence and other technical rules of procedure. All testimony at any hearing before an appeals referee upon a disputed claim shall be recorded unless the ~~the~~ parties have waived the evidentiary hearing and entered into a stipulation resolving the issues pending before the appeals referee, hearing officer, or other employee assigned to make the ~~decision.~~decision. The appeals referee, hearing officer, or other employee assigned to make the decision may either accept or reject the stipulation. If the stipulation is rejected, the parties may appeal the decision to the Board of Review. ~~but~~ If the testimony is recorded, it need not be transcribed unless the disputed claim is further appealed and, one or more of the parties objects, under such rules as the Division may adopt, to being provided a copy of the tape recording of the hearing. Any other provisions of this Chapter notwithstanding, any individual receiving the transcript shall pay to the Division such reasonable fee for the transcript as the Division may by regulation provide. The fee so prescribed by the Division for a party shall not exceed the lesser of sixty-five cents (65¢) per page or sixty-five dollars ($65.00) per transcript. The Division may by regulation provide for the fee to be waived in such circumstances as it in its sole discretion deems appropriate but in the case of an appeal in forma pauperis supported by such proofs as are required in G.S. 1-110, the Division shall waive the fee."

SECTION 2.(e) This section becomes effective November 1, 2012.

PART III. COMPLIANCE WITH THE TRADE ADJUSTMENT ASSISTANCE EXTENSION ACT OF 2011

SECTION 3.(a) G.S. 110-129.2(c) reads as rewritten:

"(c) Report Contents. – Each report required by this section shall contain the name, address, ~~and~~ social security number of the newly hired employee, the date services for remuneration were first performed by the newly hired employee, and the name and address of the employer and the employer's identifying number assigned under section 6109 of the Internal Revenue Code of 1986 and the employer's State employer identification number. Reports shall be made on the W-4 form or, at the option of the employer, an equivalent form, and may be transmitted magnetically, electronically, or by first-class mail."

SECTION 3.(b) G.S. 110-129.2(j) is amended by adding a new subdivision to read:

"(j) Definitions. – As used in this section, unless the context clearly requires otherwise, the term:

...

(5) "Newly hired employee" means both an employee who has not previously been employed by the employer as well as an employee who was previously employed by the employer but has been separated from such prior employment for at least 60 consecutive days."

SECTION 3.(c) G.S. 96-9(c)(2) is amending by adding a new sub-subdivision to read:

"(2) Charging of benefit payments. –

...

f. The Division shall charge benefits to an employer's account when it determines that an overpayment has been made to a claimant and it determines that both of the following conditions apply:

1. The overpayment occurred because the employer failed to respond timely or adequately to a written request of the Division for information relating to an unemployment compensation claim.
2. The employer exhibits a pattern of failure to respond timely or adequately by failing to respond to written requests from the Division for information relating to an unemployment compensation claim on two or more occasions. If an employer uses a third party agent to respond on its behalf to the Division, then the actions of the agent must be considered when determining a pattern of failure to respond timely or adequately. A pattern is established based on the agent's behavior overall and not only with respect to its behavior related to the employer.

For purposes of this sub-subdivision, written notification may include a request sent electronically. A response is considered untimely if it fails to be made within the time allowed under G.S. 96-15(b)(2). A response is considered inadequate if it fails

to provide sufficient facts to enable the Division to make a correct determination of benefits. However, a response may not be considered inadequate if the Division fails to request the necessary information.

The prohibition on the noncharging of an employer's account under this sub-subdivision applies to each week of unemployment compensation that is an overpayment until the Division makes a determination that the claimant is no longer eligible for the overpaid amount and stops making the overpayment. If the claim is a combined-wage claim, the determination of noncharging for the combined-wage claim shall be made by the paying state. If the response from the employer does not meet the criteria established by the paying state for an adequate or timely response, the paying state must promptly notify the transferring state of its determination and the employer must be appropriately charged. The Division may waive the prohibition for good cause."

SECTION 3.(d) Subsections (a) and (b) of this section become effective July 1, 2012. Subsection (c) of this section becomes effective October 1, 2013.

PART IV. EFFECTIVE DATES

SECTION 4. Except as otherwise provides, this act is effective when it becomes law.

Bill Draft 2011-RBz-20: Unemployment Insurance Changes.

2011-2012 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	May 1, 2012
Introduced by:		**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	2011-RBz-20		

SUMMARY: 2011-RBx-20 includes several changes to the unemployment laws that fall within these three categories:

- ***The extension of the three-year look-back period from January 1, 2012, to January 1, 2013.***
- ***The resolution of outstanding issues associated with S. L. 2011-401, Senate Bill 532.***
- ***The statutory changes required to comply with the federal Trade Adjustment Assistance Extension Act of 2011.***

CHANGE IN THE LAW TO CONTINUE THE THREE-YEAR LOOK-BACK TRIGGER FOR EXTENDED BENEFIT

There are two permanent benefit programs required by federal law: regular unemployment benefits and extended benefits.[1] Regular unemployment benefits are fully funded by the State through its State Unemployment Insurance Trust Fund and claimants in North Carolina are eligible to receive benefits for up to 26 weeks under it. Extended benefits are available in a state when the state is experiencing high levels of unemployment.[2] The program is funded 50% by state contributions and 50% by the federal government. However, the federal government has paid 100% of the extended benefit claims since February 22, 2009.[3]

Extended benefits are triggered in a state when the unemployment rate is at least 6.5% and at least 10% higher than it was at the same time in either of the past two calendar years; this two-year window is known as the "two-year look-back". In the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010[4], Congress allowed states to amend their laws to temporarily increase the two-year look-back period to a three-year look-back period. This measure enabled more states to offer extended benefits. Under the 2010 legislation, the temporary measure ended December 31, 2011. However, Congress extended the temporary measure twice.[5] It is currently set to expire December 31, 2012.

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[1] Congress enacted Emergency Unemployment Compensation in 2008, known as EUC08. These benefits are fully payable by the federal treasury.

[2] In North Carolina, a claimant may receive up to 20 weeks of extended benefits.

[3] P.L. 111-5, Sec. 2005, approved February 19, 2009, *American Recovery and Reinvestment Act of 2009.* The provision has been extended several times in other federal legislation. The current expiration date for federal funding of extended benefits is December 31, 2012.

[4] P.L.111-312, approved December 17, 2010.

[5] P.L. 112-78, approved December 23, 2011, *Temporary Payroll Tax Cut Continuation Act of 2011.* P.L. 112-96, approved February 22, 2012, *The Middle Class Tax Relief and Job Creation Act of 2012.*

North Carolina changed the law to permit a three-year look-back in S.L. 2011-145, Section 6.16. This provision expired January 1, 2012. *Legislative Proposal #2* would extend the sunset from January 1, 2012, until January 1, 2013. In North Carolina, extended benefits will not be allowed for claim weeks later than May 12, 2012, because the State's unemployment rate has fallen below the trigger. However, it is possible the extended benefits may trigger back "on" before the end of the year.

The Governor ordered the Employment Security Commission to use the three-year look-back in Executive Order 93, dated June 3, 2011. The Governor ordered the Division of Employment Security to use the three-year look-back in Executive Order 113, dated January 11, 2012. Although the Executive Orders purport to give the Governor the authority to make this change, the federal law clearly states that a "State may by law" provide for the temporary look-back extension.[6] *Legislative Proposal #2*, finds that the Governor did not have the authority under federal law, the North Carolina Constitution, or Chapter 96 of the North Carolina General Statutes to change the look-back period.

RESOLUTION OF OUTSTANDING ISSUES FROM S.L. 2011-401, SENATE BILL 532

The General Assembly enacted Senate Bill 532 on July 26, 2012. The Senate passed the bill on June 2, 2011, by a vote of 43 to 5. The House passed the bill on June 15, 2011, by a vote of 104 to 12. Senate Bill 532 had four operative parts:

- It created the Division of Employment Security within the Department of Commerce and transferred the functions of the Employment Security Commission to that Division.
- It made the Division subject to rulemaking under Article 2A of chapter 150B of the General Statutes.
- It made substantive changes to the employment security laws.
- It made conforming changes to the employment security laws.

On June 30, 2011, the Governor vetoed the bill. In the Governor's Objections and Veto Message, she stated the U.S. Department of Labor informed the administration that a lack of conformity between the bill and federal law could result in a loss of money for the State's unemployment insurance program and a reduction in the FUTA tax credit.[7] A state's law must conform to the provisions of the federal unemployment compensation laws in order for employers in a state to be eligible for a credit against the FUTA tax and for the state to be eligible to receive an administrative grant to operate its unemployment compensation programs.

The General Assembly overrode the Governor's veto on July 26, 2011.[8] After passage of the bill, the Employment Security Commission informed the General Assembly by a letter dated October 12, 2011, of its intention to suspend the provisions of the bill determined by the U.S. Department of Labor to be noncompliant with federal law. G.S. 96-19(b) gives the Division of Employment Security the authority to suspend enforcement of a provision upon receiving notification from the U.S. Department of Labor that the provision is noncompliant with the requirements of federal law. The suspension may be in effect until the Legislature next has an opportunity to reconsider the provisions purported to be noncompliant with federal law.

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[6] P. L. 11-312, approved December 2010, Sec. 502, *Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.*

[7] The FUTA tax rate is 6% and is imposed on wages up to $7,000 a year. Federal law provides a credit against the tax liability of up to 5.4% to employers who pay state taxes timely under an approved state unemployment insurance program. The 2012 effective FUTA tax rate for NC employers is 0.9%, which is approximately $63 per employee.

[8] The Senate voted to override the veto on July 13, 2011, by a vote of 31 to 17. The House voted to override the veto on July 26, 2011, by a vote of 72 to 47.

Legislative Proposal #2 addresses the areas of concern noted by the U.S. Department of Labor:

- Senate Bill 532 expanded the time for an employer to provide information required to protest a claim from 10 days to 30 days. The U.S. Department of Labor noted that the extension of time would make it virtually impossible for the agency to make timely determinations under the standards set by federal regulations.[9]
- An individual is totally disqualified from receiving benefits if the Division of Employment Security determines the individual was discharged for misconduct connected with the work. Senate Bill 532 expanded the definition of "misconduct connected with the work" to include both of the following:
    - Arrest for or conviction of certain offenses. The U.S. Department of Labor noted that the new definition did not require that the criminal conduct be connected with the individual's work.
    - Failure to adequately perform employment duties after being warned. The U.S. Department of Labor noted that, in order to be the basis for a disqualification to receive unemployment benefits, unsatisfactory job performance must be the result of intentional behavior or gross negligence, and must be egregious.
- Senate Bill 532 allowed the parties to tender stipulation of the ultimate issues in cases pending on appeal to the agency. The U.S. Department of Labor noted that while a stipulation of facts might be acceptable, a stipulation of the issues vitiates the agency's federally-mandated responsibility to apply the unemployment law to specific facts. The Department also recommended that any procedure or process by which an appeals referee or hearing officer accepts a stipulation of fact should be recorded.

Senate Bill 532 created a Board of Review[10] to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Employment Security Section and the Employment Insurance Section. The annual salaries of the three-person board are to be set by the General Assembly in the current Operations Appropriations Act. The Current Operations and Capital Improvements Appropriations Act of 2011 did not set the salaries for the members of the Board of Review. *Legislative Proposal #2* provides that the current Operations Appropriations Act of 2012 must provide for the annual salaries of the Board of Review, as provided in G.S. 96-4(b).

COMPLIANCE WITH THE TRADE ADJUSTMENT ASSISTANCE EXTENSION ACT OF 2011

In 2002, the United States General Accounting Office issued a report on the unemployment insurance program and the need for an increased focus on program integrity. The focus of President Obama's Executive Order 13520, issued November 23, 2009, was the reduction of improper payments in major programs administered by the federal government, including the unemployment insurance program. In response to the level of improper payments in the unemployment insurance program, the U.S. Department of Labor developed a strategic plan to address the root causes of improper payments. The plan involves new performance measures for the states; increased funding of new tools and technology; and a focus on the root causes leading to improper payments. The three identified root causes leading to improper payments are:

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[9] For most intrastate claims, federal regulations require that a state pay at least 87% of its claims within 14 days of the end of the first compensable week, or 21 days for states that do not have a waiting week requirement, and 93% of such claims within 35 days.

[10] G.S. 96-4(b).

- Claimants continuing to claim benefits after returning to work.
- Untimely and insufficient separation information from employers and third party administrators.
- A gap in employment service registration.

As part of the increased focus on program integrity, the U.S. Department of Labor recommended legislative language to Congress in June of 2011. In October 2011, three key integrity provisions recommended by the Department were enacted as part of the Trade Adjustment Assistance Extension Act of 2011. *Legislative Proposal # 2*, includes two of the statutory changes the State must make to be in conformity with the program integrity provisions in the federal law:

- New Hire Directory. – To address the gap in employment service registration, the federal law requires states to expand the definition of a 'newly hired employee' to include a rehired employee who was separated for at least 60 days. It also requires employers to enter the start date of employment when the employer submits the information to the New Hire Directory. The New Hire Directory was created years ago to assist states with the collection of child support payments. The Directory is administered by the Department of Health and Human Services. The directory is also a valuable tool for unemployment insurance programs because it allows the agency to cross-check claimants with new hires. This information assists the agency with the detection of overpayments being made to individuals who have returned to work. States are required to make the necessary statutory changes to its New Hire Directory within two months after the latest legislative session ends. *Legislative Proposal #2* includes the necessary changes.

- Prohibition on Non-Charging of Employer Accounts. – To address the untimely and insufficient separation information provided by employers and third party administrators to the agencies, the federal law requires states to enact a provision prohibiting the non-charging of employer's unemployment insurance account when an improper payment is made because of the employer's failure to respond timely or adequately to a written request for separation information. In most states, an employer's state unemployment tax rate is based upon an experience rating whereby employers that have more claims or charges against their unemployment insurance account have a higher tax rate. Under current law, benefits paid to a claimant erroneously may not be charged to the employer's account. Under this provision, the benefits would be charged to the employer's account if the erroneous payment is made because the employer failed to respond timely and adequately to the agency. This provision points to a trend whereby employers are expected to improve the quality of information provided to state employment agencies at the front end of the UI claim process, rather than waiting until a hearing to provide details. Although a state may impose a stricter standard, it must impose the minimal federal standard by October 21, 2013. *Legislative Proposal #2* includes the necessary changes, with an effective date of October 1, 2013.

- Monetary Penalty Assessment. – To address claimants who fraudulently continue to accept unemployment benefits after returning to work, the federal law requires states to impose a penalty on the claimant equal to 15% of the amount of an erroneous overpayment if it determines that the overpayment is due to fraud. Under G.S. 96-18(a), a fraudulent overpayment is one that results from a person's false statement or representation ***knowing*** it to be false or from a person ***knowingly*** failing to disclose a material fact to obtain or increase a benefit received. The money collected from the penalty is payable to the State Unemployment Trust Fund and its use is limited to the

payment of unemployment compensation benefits. States may enact a larger penalty amount and may use the additional amount for whatever purpose it desires. The 15% federally mandatory penalty must be in place by October 21, 2013. *Legislative Proposal #2* does not include the necessary legislative changes to implement this assessment.

2011-RBz-20-SMRB-117 v1

LEGISLATIVE PROPOSAL #3

EXTEND TAX PROVISIONS

LEGISLATIVE PROPOSAL #3

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2012 REGULAR SESSION OF THE 2011 GENERAL ASSEMBLY

AN ACT TO EXTEND THE SUNSET OF CERTAIN TAX PROVISIONS AS PROPOSED BY THE REVENUE LAWS STUDY COMMITTEE

SHORT TITLE: Extend Tax Provisions.

PRIMARY SPONSORS:

BRIEF OVERVIEW: This Legislative Proposal would extend the sunset of certain tax provisions through 2014.

FISCAL IMPACT:

EFFECTIVE DATE: This act would become effective when it becomes law.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE DRH30541-TDxz-17 (03/01)

Short Title: Extend Tax Provisions. (Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET OF CERTAIN TAX PROVISIONS, AS PROPOSED BY THE REVENUE LAWS STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2009-505 reads as rewritten:

"**SECTION 2.** This act is effective when it becomes law and expires ~~July 1, 2012.~~July 1, 2013."

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

"(d) Sunset. – This section is repealed effective for facilities placed in service on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 3. G.S. 105-129.16F(b) reads as rewritten:

"(b) Sunset. – This section is repealed for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 4. G.S. 105-129.16G(b) reads as rewritten:

"(b) Sunset. – This section expires for taxable years beginning on or after ~~January 1, 2012.~~January 1, 2014."

SECTION 5. G.S. 105-129.82(a) reads as rewritten:

"(a) Sunset. – This Article is repealed effective for business activities that occur on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 6.(a) G.S. 105-130.48(f) reads as rewritten:

"(f) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 6.(b) G.S. 105-151.30(f) reads as rewritten:

"(f) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 7. G.S. 105-151.28(d) reads as rewritten:

"(d) Sunset. – This section is repealed for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 8. G.S. 105-151.31(c) reads as rewritten:

"(c) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 9. G.S. 105-131.32(c) reads as rewritten:

"(c) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 10. G.S. 105-163.015 reads as rewritten:

"**§ 105-163.015. Sunset.**

This Part is repealed effective for investments made on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 11.(a) G.S. 105-164.14A(a) reads as rewritten:

"(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:

(1) **(Repealed for purchases made on or after January 1, 2013)** Passenger air carrier. – An interstate passenger air carrier is allowed a refund of the sales and use tax paid by it on fuel in excess of two million five hundred thousand dollars ($2,500,000). The amount of sales and use tax paid does not include a refund allowed to the interstate passenger air carrier under G.S. 105-164.14(a). This subdivision is repealed for purchases made on or after ~~January 1, 2013.~~January 1, 2014.

(2) Major recycling facility. – An owner of a major recycling facility is allowed a refund of the sales and use tax paid by it on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner.

(3) Business in low-tier area. – A taxpayer that is engaged primarily in one of the businesses listed in G.S. 105-129.83(a) in a development tier one area and that places machinery and equipment in service in that area is allowed a refund of the sales and use tax paid by it on the machinery and equipment. For purposes of this subdivision, "machinery and equipment" includes engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. 105-129.83, capitalized for tax purposes under the Code, and not leased to another party. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. The sunset for Article 3J of Chapter 105 of the General Statutes for development tier one areas applies to this subdivision.

(4) **(Repealed for purchases made on or after January 1, 2013)** Motorsports team or sanctioning body. – A professional motorsports racing team, a motorsports sanctioning body, or a related member of such a team or body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this subdivision, a "motorsports event" includes a motorsports race, a motorsports

sponsor event, and motorsports testing. This subdivision is repealed for purchases made on or after ~~January 1, 2013~~January 1, 2014.

(5) **(Repealed for purchases made on or after January 1, 2014)** Professional motorsports team. – A professional motorsports racing team or a related member of a team is allowed a refund of fifty percent (50%) of the sales and use tax paid by it in this State on tangible personal property, other than tires or accessories, that comprises any part of a professional motorsports vehicle. For purposes of this subdivision, "motorsports accessories" includes instrumentation, telemetry, consumables, and paint. This subdivision is repealed for purchases made on or after January 1, 2014.

(6) **(Repealed for purchases made on or after January 1, 2013)** Analytical services business. – A taxpayer engaged in analytical services in this State is allowed a refund of sales and use tax paid by it. This subdivision is repealed for purchases made on or after ~~January 1, 2013~~January 1, 2014. The amount of the refund is the greater of the following:

a. Fifty percent (50%) of the eligible amount of sales and use tax paid by it on tangible personal property that is consumed or transformed in analytical service activities. The eligible amount of sales and use tax paid by the taxpayer in this State is the amount by which sales and use tax paid by the taxpayer in this State in the fiscal year exceed the amount paid by the taxpayer in this State in the 2006-2007 State fiscal year.

b. Fifty percent (50%) of the amount of sales and use tax paid by it in the fiscal year on medical reagents.

(7) **(Repealed for purchases made on or after January 1, 2038)** Railroad intermodal facility. – The owner or lessee of an eligible railroad intermodal facility is allowed a refund of sales and use tax paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the facility. Liability incurred indirectly by the owner or lessee of the facility for sales and use taxes on these items is considered tax paid by the owner or lessee. This subdivision is repealed for purchases made on or after January 1, 2038."

SECTION 11.(b) G.S. 105-164.14B(f) reads as rewritten:

"(f) Sunset. – This section is repealed for sales made on or after ~~January 1, 2013~~January 1, 2014."

SECTION 12. This act is effective when it becomes law.

Bill Draft 2011-TDxz-17: Extend Tax Provisions.

2011-2012 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	May 2, 2012
Introduced by:		**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	2011-TDxz-17		

SUMMARY: The proposed draft extends several tax provisions.

BILL ANALYSIS: It is anticipated that major tax reform will be undertaken during the 2013 session of the General Assembly. This act extends the following provisions in order to maintain the current state of the North Carolina tax code until comprehensive tax reform can be accomplished.

Sec. 1: Extends the tier one designation for seafood industrial parks through July 1, 2013.

Sec. 2-11: Extends the following tax credits through January 1, 2014

2. Tax credit for renewable fuel facilities.
3. Tax credit for biodiesel producers.
4. Work opportunity tax credit. .
5. Tax credit for renewable energy property facilities.
6. Article 3J tax credits.
7. Tax credit for recycling oyster shells.
8. Tax credit for premiums on long-term care insurance
9. Refundable earned income tax credit.
10. Tax credit for adoption expenses.
11. Tax credit for qualified business ventures.

Section 12: Extends the following sales tax refunds through January 1, 2014:

- Passenger air carriers
- Machinery and equipment place in a tier 1 county.
- Aviation fuel for motorsports team of sanctioning body.
- Analytical services.
- Certain industrial facilities.

EFFECTIVE DATE: This act is 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. 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. Periodic review of tax credits 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

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 2, 2012

TO: Revenue Laws Study Committee

FROM: Jonathan Tart, Rodney Bizzell and Sandra Johnson
Fiscal Research Division

RE: Extend Tax Provisions

FISCAL IMPACT ($millions)

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2011-12	**FY 2012-13**	**FY 2013-14**	**FY 2014-15**	**FY 2015-16**
REVENUES:					
General Fund:	**$0**	**-$0.8**	**-$135.8**	**-$14.3**	**$-14.3**
Local Gov't:	**Minimal impact from builder's inventory extension.**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Dept. of Revenue

EFFECTIVE DATE: Effective when it becomes law

BILL SUMMARY: This proposal would extend the expiring tax expenditures listed in the chart below:

	Repeal Date	FY 13/14 Revenue Loss
Income Tax Credits:		
o Work opportunity tax credit	01/01/2012	$800,000
o Tax credit for constructing renewable fuel facilities	01/01/2013	$100,000
o Tax credit for biodiesel producers (motor fuel excise tax)	01/01/2013	$100,000
o Tax credit for renewable energy property facility	01/01/2013	$0
o Article 3J tax credits		
- Credit for Creating Jobs	01/01/2013	$1,000,000
- Credit for Investing in Business Property	01/01/2013	$5,100,000
- Credit for Investing in Real Property	01/01/2013	$300,000
o Tax credit for qualified business ventures	01/01/2013	$7,500,000
o Tax credit for recycling oyster shells	01/01/2013	$100,000
o Tax credit for premiums paid on long-term care insurance	01/01/2013	$5,800,000
o Tax credit for adoption expenses	01/01/2013	$5,400,000
o Refundable earned income tax credit	01/01/2013	$102,500,000
Sales Tax Refunds:		
o Sales tax refund for passenger air carriers	01/01/2013	$6,000,000
o Sales tax refund for machinery and equipment placed in a tier one county	01/01/2013	$200,000
o Sales tax refund for aviation fuel of motorsports team or sanctioning body	01/01/2013	$100,000
o Sales tax refund for analytical services business	01/01/2013	$100,000
o Sales tax refund for certain industrial facilities	01/01/2013	$700,000
Property Tax Deferral:		
o Builder's inventory property tax deferral	07/01/2013	minimal
Total:		$135,800,000

The work opportunity tax credit was repealed for 2012. The proposal would reinstate the credit for 2012 and schedule its repeal for 2014. The other provisions are scheduled for repeal in 2013. The proposal extends the repeal date for one year to 2014.

ASSUMPTIONS AND METHODOLOGY:
The estimated impact for the income and sales tax provisions is based on data obtained from the Department of Revenue. The fiscal impact shown for FY 14/15 and FY 15/16 is due to the extension of the Article 3J tax credits. The Article 3J tax credits are taken in installments that don't begin until the tax year following the year generated and are subject to carry-forward provisions. Consequently, the fiscal impact for a one year extension of Article 3J is spread out over a 10-year period.

The impact for the Builder's Inventory Property Tax Deferral is expected to be minimal. The bill would extend the deferral by one year to July 1, 2014. Based on a survey of property tax assessors conducted when the deferral was initially passed in 2009, the number of builders using the deferral is expected to decrease rapidly as the housing market improves. Information from Moody's Analytics indicates that housing starts for North Carolina are expected to increase over 50% for 2013 and 2014. This would indicate rapid improvement in sales and declining inventory for builders.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #4

APPRAISAL MANAGEMENT COMPANIES REPORTED TO DEPARTMENT OF REVENUE

LEGISLATIVE PROPOSAL #4

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2012 REGULAR SESSION OF THE 2011 GENERAL ASSEMBLY

AN ACT TO REQUIRE THE NORTH CAROLINA APPRAISAL BOARD TO REPORT THE RECORDS OF APPRAISAL MANAGEMENT COMPANIES TO THE NORTH CAROLINA DEPARTMENT OF REVENUE

SHORT TITLE: Appraisal Management Company Reported to Department of Revenue.

PRIMARY SPONSORS:

BRIEF OVERVIEW: This Legislative Proposal would require the North Carolina Appraisal Board to report annually to the North Carolina Department of Revenue the following information about registered appraisal management companies: name, address, process agent if any, type of entity, employer identification number or social security number, and North Carolina Secretary of State identification number if any.

FISCAL IMPACT:

EFFECTIVE DATE: This act would become effective December 1, 2012.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE DRH60113-TMz-10 (04/11)

Short Title: Appraisal Mgmt Co Reported to Dept of Revenue. (Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE NORTH CAROLINA APPRAISAL BOARD TO REPORT THE RECORDS OF APPRAISAL MANAGEMENT COMPANIES TO THE NORTH CAROLINA DEPARTMENT OF REVENUE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93E-2-9 is amended by adding the following new subsection to read:

"**§ 93E-2-9. Records.**

(a) The Board shall maintain a list of all applicants for registration under this Article that includes for each applicant the date of application, the name and primary business location of the applicant, and whether the registration was granted or refused.

(b) The Board shall maintain a current roster showing the names and places of business of all registered appraisal management companies that lists the appraisal management companies' respective officers and directors. The rosters shall: (i) be kept on file in the office of the Board; (ii) contain information regarding all orders or other action taken against the company, its officers, and other persons; and (iii) be open to public inspection.

(b1) The Board shall report annually to the Department of Revenue the following information about registered appraisal management companies:

(1) Name and name used to do business in the State.

(2) Main address of company.

(3) Name and address of agent for service of process in the State if not domiciled in the State.

(4) Legal structure, such as domestic corporation, foreign corporation, domestic partnership, or foreign partnership.

(5) Employer identification number or social security number.

(6) Secretary of State identification number if required.

(c) Every registered appraisal management company shall maintain the accounts, correspondence, memoranda, papers, books, and other records related to services provided by the appraisal management company as prescribed in rules adopted by the

Board, including in electronic form. All records shall be preserved for five years unless the Board, by rule, prescribes otherwise for particular types of records.

(d) If the information contained in any document filed with the Board is or becomes inaccurate or incomplete in any material respect, the appraisal management company shall promptly file a correcting amendment to the information contained in the document."

SECTION 2. Section 1 of this act becomes effective December 1, 2012. The remainder of this act is effective when it becomes law.

2011-2012 General Assembly

Bill Draft 2011-TMz-10: Appraisal Mgmt Co Reported to Dept of Revenue.

Committee:	Revenue Laws Study Committee	**Date:**	May 2, 2012
Introduced by:		**Prepared by:**	Greg Roney Committee Counsel
Analysis of:	2011-TMz-10		

SUMMARY: The Bill Draft would require the NC Appraisal Board to report annually to the NC Department of Revenue the following information about registered appraisal management companies: name, address, process agent if any, type of entity, employer identification number or social security number, and NC Secretary of State identification number if any.

CURRENT LAW: S.L. 2010-141 added a new Article 2 in Chapter 93E to regulate real estate appraisal management companies. G.S. 93E-2-1 requires appraisal management companies meet certain requirements and register with the Appraisal Board beginning January 1, 2011.

S.L. 2010-141 defines an appraisal management company as an entity that uses a network of licensed appraisers who are independent contractors to perform appraisals. Additionally, the appraisal management company must administer the network of appraisers including recruiting appraisers, negotiating fees and contracts with the appraisers, and conducting quality control of the appraisals.

All of the information the Bill Draft would require the Appraisal Board to report is already disclosed when an appraisal management company registers.

Under G.S. 93E-2-9(b), the public records of the Appraisal Board include the roster showing the names, places of business, and listing of officers and directors of all registered appraisal management companies.

BILL ANALYSIS: The Bill Draft would require the Appraisal Board to report annually to the Department of Revenue information collected from appraisal management companies during the registration process. Specifically, the Bill Draft would require the following information be reported annually to the Department of Revenue: name, address, process agent if any, type of entity, employer identification number or social security number, and NC Secretary of State identification number if any.

BACKGROUND: Federal regulations adopted in response to the housing crisis led to the growth of appraisal management companies. The Appraisal Board has approximately 140 registered appraisal management companies. Only 6 of the 140 are NC companies. The out-of-state companies owe State income tax on the appraisal work conducted within the State.

The purpose of the Bill Draft is to insure out-of-state appraisal management companies are paying NC taxes. The Department of Revenue could use the information from the Appraisal Board to check the filing status of registered appraisal management companies.

EFFECTIVE DATE: The Bill Draft would be effective December 1, 2012.

LEGISLATIVE PROPOSAL #5

REVENUE LAWS TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES

LEGISLATIVE PROPOSAL #5

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2012 REGULAR SESSION OF THE 2011 GENERAL ASSEMBLY

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

SHORT TITLE: Revenue Laws Technical, Clarifying, and Administrative Changes

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PRIMARY SPONSORS:

BRIEF OVERVIEW: This Legislative Proposal would make technical, clarifying, and administrative changes to the revenue laws and related statutes, many of which were requested by the Department of Revenue.

FISCAL IMPACT:

EFFECTIVE DATE: Except as otherwise provided, this act would become effective when it becomes law.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE DRH80285-SVxfz-13 (03/05)

Short Title:	Revenue Laws Tech., Clarifying, & Admin Chngs.	(Public)
Sponsors:	Representatives Howard and Starnes (Primary 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:

PART I. TECHNICAL CHANGES

SECTION 1.1. G.S. 105-130.5(b) reads as rewritten:

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

...

(14) The amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a tax credit allowed against the corporation's federal income tax ~~liability.~~ liability or because of a grant allowed under section 1603 of the American Recovery and Reinvestment Tax Act of 2009, P.L. 111-3. This deduction may be claimed only in the year in which the Code requires that the asset's basis be reduced. In computing gain or loss on the asset's disposition, this deduction shall be considered as depreciation.

...."

SECTION 1.2. G.S. 105-164.13 reads as rewritten:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(11) Any of the following fuel:

a. Motor fuel, as ~~defined in G.S. 105-449.60,~~ taxed in Article 36C of this Chapter, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105 449.105A or G.S. 105 449.107.

b. Alternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under G.S. 105 449.107.

...

(49) Installation charges when the charges are separately stated on the invoice or similar billing document given to the purchaser at the time of sale.

(49a) Delivery charges for delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the ~~purchaser.~~purchaser at the time of sale.

...."

SECTION 1.3. The title of Article 5F of Chapter 105 of the General Statutes reads as rewritten:

"Article 5F.

~~Manufacturing Fuel and~~ Certain Machinery and Equipment."

SECTION 1.4. The catchline of G.S. 105-187.70, as enacted by Section 6 of S.L. 2011-122, reads as rewritten:

"**§ 105-187.70. Department comply with Article 43 of Chapter 62A of the General Statutes.**

SECTION 1.5.(a) G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2011,~~ January 1, 2012, including any provisions enacted as of that date that become effective either before or after that date."

SECTION 1.5.(b) This section is effective when it becomes law. Notwithstanding subsection (a) of this section, any amendments to the Internal Revenue Code enacted after January 1, 2011, that increase North Carolina taxable income for the 2011 taxable year become effective for taxable years beginning on or after January 1, 2012.

SECTION 1.6. G.S. 105-263(a) reads as rewritten:

"(a) Mailed Document. ~~Section~~ Sections 7502 and 7503 of the Code ~~governs~~ govern when a return, report, payment, or any other document that is mailed to the Department is timely filed."

SECTION 1.7. G.S. 105-277.1F(a)(1) reads as rewritten:

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

(1) ~~G.S. 105-275(12)f., real property held for future transfer to government unit for conservation purposes.~~G.S. 105-275(12), real property owned by a nonprofit corporation held as a protected natural area."

SECTION 1.8. G.S. 105-468 reads as rewritten:

"**§ 105-468. Scope of use tax.**

The use tax authorized by this Article is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property that is not sold in the taxing county but is used, consumed, or stored for use or consumption in the taxing county. The tax applies to the same items that are subject to tax under G.S. 105-467.

Every retailer who is engaged in business in this State and in the taxing county and is required to collect the use tax levied by G.S. 105-164.6 shall collect the one percent (1%) use tax when the property is to be used, consumed, or stored in the taxing county. The use tax contemplated by this section shall be levied against the purchaser, and the purchaser's liability for the use tax shall be extinguished only upon payment of the use

tax to the retailer, where the retailer is required to collect the tax, or to the Secretary, where the retailer is not required to collect the tax.

Where a local sales or use tax has been paid with respect to tangible personal property by the ~~purchaser, either~~ purchaser in another taxing county within the State, or where a local sales or use tax was due and has been paid in a taxing jurisdiction outside the State where the purpose of the tax is similar in purpose and intent to the tax which may be imposed pursuant to this Article, the tax paid may be credited against the tax imposed under this section by a taxing county upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due the taxing county under this section, the purchaser shall pay to the Secretary an amount equal to the difference between the amount so paid in the other taxing county or jurisdiction and the amount due in the taxing county. The Secretary may require such proof of payment in another taxing county or jurisdiction as is deemed to be necessary. The use tax levied under this Article is not subject to credit for payment of any State sales or use tax not imposed for the benefit and use of counties and municipalities. No credit shall be given under this section for sales or use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not grant similar credit for sales taxes paid under this Article."

SECTION 1.9. G.S. 160A-536(e)(2) reads as rewritten:

"(2) The city must receive a petition signed by at least sixty percent (60%) of the lot owners of the owners' association requesting the city to establish a municipal service district for the purpose of paying the costs related to converting private residential streets to public streets. The executive board of an owners' association for which the city has received a petition under this subsection may transfer street-related common elements to the city, notwithstanding the provisions of either the North Carolina Planned Community Act in Chapter 47F of the General ~~Statutes,~~ Statutes or the North Carolina Condominium Act in Chapter 47C of the General Statutes, or related articles of declaration, deed covenants, or any other similar document recorded with the Register of Deeds."

SECTION 1.10.(a) G.S. 20-63 reads as rewritten:

"(b1) **(Effective until July 1, 2016)** The following special registration plates do not have to be a "First in Flight" plate as provided in subsection (b) of this section. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification. When the Division registers a vehicle or renews the registration of a vehicle on or after July 1, 2015, the Division must send the owner a replacement special license plate in a standardized format in accordance with subsection (b) of this section and G.S. 20-79.4(a3).

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.
(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.
(6) In God We Trust.
(7) Stock Car Racing Theme.

(8) Buddy Pelletier Surfing Foundation.
(9) Guilford Battleground Company.
(10) National Wild Turkey Federation.
(11) North Carolina Aquarium Society.
(12) First in Forestry.
(13) North Carolina Wildlife Habitat Foundation.
(14) NC Trout Unlimited.
(15) Ducks Unlimited.
(16) Lung Cancer Research.
(17) NC State Parks.
(18) Support Our Troops.
(19) US Equine Rescue League.
(20) Fox Hunting.
(21) Back Country Horsemen of North Carolina.
(22) Hospice Care.
(23) Home Care and Hospice.
(24) NC Tennis Foundation.
(25) AIDS Awareness.
(26) Donate Life.
(27) Farmland Preservation.
(28) Travel and Tourism.
(29) Battle of Kings Mountain.
(30) NC Civil War.
(31) North Carolina Zoological Society.
(32) United States Service Academy.
(33) Carolina Raptor Center.
(34) Carolinas Credit Union Foundation.
(35) North Carolina State Flag.
(36) NC Mining.
(37) Coastal Land Trust.
(38) ARTS NC.
(39) Choose Life.
(40) North Carolina Green Industry Council.
(41) NC Horse Council.
(42) Core Sound Waterfowl Museum and Heritage Center.
(43) Mountains-to-Sea Trail, Inc."

SECTION 1.10.(b) G.S. 20-79.7(a) reads as rewritten:

"**§ 20-79.7. Fees for special registration plates and distribution of the fees.**

(a) Fees. – Upon request, the Division shall provide and issue free of charge a single Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War registration plate to a recipient of a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war each year. The preceding special registration plates are subject to the regular motor vehicle registration fees in G.S. 20-88, if the registered weight of the vehicle is greater than 6,000 pounds. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
American Red Cross	$30.00
Animal Lovers	$30.00
Arthritis Foundation	$30.00
ARTS NC	$30.00
Back Country Horsemen of NC	$30.00
Boy Scouts of America	$30.00
Brenner Children's Hospital	$30.00
Carolina Raptor Center	$30.00
Carolinas Credit Union Foundation	$30.00
Carolinas Golf Association	$30.00
Coastal Conservation Association	$30.00
Coastal Land Trust	$30.00
Crystal Coast	$30.00
Daniel Stowe Botanical Garden	$30.00
El Pueblo	$30.00
Farmland Preservation	$30.00
First in Forestry	$30.00
Girl Scouts	$30.00
Greensboro Symphony Guild	$30.00
Historical Attraction	$30.00
Home Care and Hospice	$30.00
Home of American Golf	$30.00
HOMES4NC	$30.00
Hospice Care	$30.00
In God We Trust	$30.00
Maggie Valley Trout Festival	$30.00
Morgan Horse Club	$30.00
Mountains-to-Sea Trail	$30.00
NC Civil War	$30.00
NC Coastal Federation	$30.00
NC Veterinary Medical Association	$30.00
National Kidney Foundation	$30.00
North Carolina 4-H Development Fund	$30.00
North Carolina Emergency Management Association	$30.00
North Carolina Green Industry Council	$30.00
North Carolina Libraries	$30.00
Outer Banks Preservation Association	$30.00
Pamlico-Tar River Foundation	$30.00
P.E.O. Sisterhood	$30.00
Personalized	$30.00
Retired Legislator	$30.00
Ronald McDonald House	$30.00
Share the Road	$30.00
S.T.A.R.	$30.00
State Attraction	$30.00

1	Stock Car Racing Theme	$30.00
2	Support NC Education	$30.00
3	Support Our Troops	$30.00
4	Sustainable Fisheries	$30.00
5	Toastmasters Club	$30.00
6	Topsail Island Shoreline Protection	$30.00
7	Travel and Tourism	$30.00
8	AIDS Awareness	$25.00
9	Buffalo Soldiers	$25.00
10	Choose Life	$25.00
11	Collegiate Insignia	$25.00
12	First in Turf	$25.00
13	Goodness Grows	$25.00
14	High School Insignia	$25.00
15	Kids First	$25.00
16	National Multiple Sclerosis Society	$25.00
17	National Wild Turkey Federation	$25.00
18	NC Agribusiness	$25.00
19	NC Children's Promise	$25.00
20	Nurses	$25.00
21	Olympic Games	$25.00
22	Rocky Mountain Elk Foundation	$25.00
23	Special Olympics	$25.00
24	Support Soccer	$25.00
25	Surveyor Plate	$25.00
26	The V Foundation for Cancer Research Division	$25.00
27	University Health Systems of Eastern Carolina	$25.00
28	Alpha Phi Alpha Fraternity	$20.00
29	ALS Association, Jim "Catfish" Hunter Chapter	$20.00
30	ARC of North Carolina	$20.00
31	Audubon North Carolina	$20.00
32	Autism Society of North Carolina	$20.00
33	Battle of Kings Mountain	$20.00
34	Be Active NC	$20.00
35	Brain Injury Awareness	$20.00
36	Breast Cancer Earlier Detection	$20.00
37	Buddy Pelletier Surfing Foundation	$20.00
38	Concerned Bikers Association/ABATE of North Carolina	$20.00
39	Daughters of the American Revolution	$20.00
40	Donate Life	$20.00
41	Ducks Unlimited	$20.00
42	Greyhound Friends of North Carolina	$20.00
43	Guilford Battleground Company	$20.00
44	Harley Owners' Group	$20.00
45	Jaycees	$20.00
46	Juvenile Diabetes Research Foundation	$20.00

Kappa Alpha Order	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
~~Morgan Horse Club~~	~~$20.00~~
Native American	$20.00
NC Fisheries Association	$20.00
NC Horse Council	$20.00
NC Mining	$20.00
NC Tennis Foundation	$20.00
NC Trout Unlimited	$20.00
NC Victim Assistance	$20.00
NC Wildlife Federation	$20.00
NC Wildlife Habitat Foundation	$20.00
NC Youth Soccer Association	$20.00
North Carolina Master Gardener	$20.00
Omega Psi Phi Fraternity	$20.00
Phi Beta Sigma Fraternity	$20.00
Piedmont Airlines	$20.00
Prince Hall Mason	$20.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
SCUBA	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
~~Sustainable Fisheries~~	~~$20.00~~
US Equine Rescue League	$20.00
USO of NC	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Carolina Regional Volleyball Association	$15.00
Carolina's Aviation Museum	$15.00
Leukemia & Lymphoma Society	$15.00
Lung Cancer Research	$15.00
NC Beekeepers	$15.00
Shag Dancing	$15.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Gold Star Lapel Button	None
Legion of Valor	None
Purple Heart Recipient	None
All Other Special Plates	$10.00."

PART II. CLARIFYING AND ADMINISTRATIVE CHANGES

SECTION 2.1. G.S. 105-113.38 reads as rewritten:

"**§ 105-113.38. ~~Bond.~~Bond or irrevocable letter of credit.**

The Secretary may require a wholesale dealer or a retail dealer to furnish a bond in an amount that adequately protects the State from loss if the dealer fails to pay taxes due under this Part. A bond shall be conditioned on compliance with this Part, shall be payable to the State, and shall be in the form required by the Secretary. The Secretary shall proportion a bond amount to the anticipated tax liability of the wholesale dealer or retail dealer. The Secretary shall periodically review the sufficiency of bonds required of dealers, and shall increase the amount of a required bond when the amount of the bond furnished no longer covers the anticipated tax liability of the wholesale dealer or retail dealer. The Secretary shall decrease the amount of a required bond when the Secretary determines that a smaller bond amount will adequately protect the State from loss. For purposes of this section, a bond may also include an irrevocable letter of credit."

SECTION 2.2.(a) G.S. 105-113.107(1a) reads as rewritten:

"(1a) At the rate of three dollars and fifty cents ($3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (1) of this ~~section.~~section, or synthetic cannabinoids."

SECTION 2.2.(b) This section becomes effective June 1, 2011.

SECTION 2.3. G.S. 105-120.2(c) reads as rewritten:

"(c) For purposes of this section, a "holding company" is a corporation that ~~receives~~ satisfies at least one of the following conditions:

(1) It has no assets other than ownership interests in corporations in which it owns, directly or indirectly, more than fifty percent (50%) of the outstanding voting stock or voting capital interests.

(2) It receives during its taxable year more than eighty percent (80%) of its gross income from corporations in which it owns directly or indirectly more than fifty percent (50%) of the outstanding voting stock or voting capital interests."

SECTION 2.4. G.S. 105-164.3 reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(25a) Over-the-counter drug. – A drug that can be dispensed under federal law without a prescription and is required by 21 C.F.R. § 201.66 to have a label containing a "Drug Facts" panel ~~and~~ or a statement of its active ingredients.

...

(36) Sale or selling. – The transfer for consideration of ~~title~~ title, license to use or consume, or possession of tangible personal property or digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. The term includes the following:

a. Fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work.

b. Furnishing or preparing tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared.

c. A transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the consideration.

d. A lease or rental.

e. Transfer of a digital code.

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of ~~May 12, 2009.~~December 19, 2011.

...."

SECTION 2.5. G.S. 105-164.4B(a) reads as rewritten:

"(a) General Principles. – The following principles apply in determining where to source the sale of a product. These principles apply regardless of the nature of the ~~product.~~product, except as otherwise noted in this section:

(1) Over-the-counter. – When a purchaser receives a product at a business location of the seller, the sale is sourced to that business location.

(2) Delivery to specified address. – When a purchaser or purchaser's donee receives a product at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser or the purchaser's donee receives the product.

~~(3) Delivery address unknown. When a seller of a product does not know the address where a product is received, the sale is sourced to the first address or location listed in this subdivision that is known to the seller:~~

~~a. The business or home address of the purchaser.~~

~~b. The billing address of the purchaser or, if the product is prepaid wireless calling service, the location associated with the mobile telephone number.~~

~~c. The address from which tangible personal property was shipped or from which a service was provided.~~

(4) When subdivisions (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(5) When subdivisions (1), (2), and (4) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of

a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(6) When subdivisions (1), (2), (4), and (5) of this subsection do not apply, including the circumstance in which the seller is without sufficient information to apply the rules, the location will be determined based on the following:

a. Address from which tangible personal property was shipped,

b. Address from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or

c. Address from which the service was provided."

SECTION 2.6. G.S. 105-164.7 reads as rewritten:

"**§ 105-164.7. Retailer to collect sales tax from purchaser as trustee for State.**

The sales tax imposed by this Article is intended to be passed on to the purchaser of a taxable item and borne by the purchaser instead of by the retailer. A retailer must collect the tax due on an item when the item is sold at retail. The tax is a debt from the purchaser to the retailer until paid and is recoverable at law by the retailer in the same manner as other debts. A retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser of a taxable item. The tax must be stated and charged separately on the invoices or other documents of the retailer given to the purchaser, except for vending machine sales. Where the sales price of a product includes the tax, a retailer must clearly display a statement indicating such."

SECTION 2.7.(a) Part 2 of Article 5 of Chapter 105 of the General Statutes is amended by adding the following new section:

"**§ 105-164.12C. Items given away by merchants.**

If a retailer engaged in the business of selling prepared food and drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, for the purpose of this Article, the property given away is considered sold along with the property sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property."

SECTION 2.7.(b) This section becomes effective August 7, 2009.

SECTION 2.8. G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. – An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives, and fuel, lubricants, repair parts, and accessories for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An "interstate carrier" is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the railway cars, locomotives, fuel, lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period. Airplane miles are not in this State if the airplane does not depart or land in this State.

(5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ~~ratio of~~ mileage ratio. The numerator of the mileage ratio is the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund ~~period to~~ period. The denominator of the mileage ratio is the number of miles it operated ~~them~~ all motor vehicles, railroad cars, locomotives, and airplanes that the applicant owns, both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

SECTION 2.9. G.S. 105-164.27A reads as rewritten:

"**§ 105-164.27A. Direct pay permit.**

(a) General. – A general direct pay permit authorizes its holder to purchase any tangible personal property, digital property, or service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A person who purchases an item under a direct pay permit issued under this subsection is liable for use tax due on the purchase. The tax is payable when the property is placed in use or the service is received. A direct pay permit issued under this subsection does not apply to taxes imposed under G.S. 105-164.4 on electricity.

A person who purchases an item for use in this State whose tax status cannot be determined at the time of the purchase because of one of the reasons listed below may apply to the Secretary for a general direct pay permit:

(1) The place of business where the item will be used is not known at the time of the purchase and a different tax consequence applies depending on where the item is used.

(2) The manner in which the item will be used is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable.

...

(b) Telecommunications Service. – A direct pay permit for telecommunications service authorizes its holder to purchase telecommunications service and ancillary service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A person who purchases these services under a direct pay permit must file a return and pay the tax due monthly or quarterly to the Secretary. A direct pay permit issued under this subsection does not apply to any tax other than the tax on telecommunications service and ancillary service.

A call center that purchases telecommunications service that originates outside this State and terminates in this State may apply to the Secretary for a direct pay permit for telecommunications service and ancillary service. A call center is a business that is primarily engaged in providing support services to customers by telephone to support products or services of the business. A business is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming.

...."

SECTION 2.10. G.S. 105-187.43(b) reads a rewritten:

"(b) Prepayment. – A taxpayer who is consistently liable for at least ~~ten~~ twenty thousand dollars ~~($10,000)~~($20,000) of tax a month must make a monthly prepayment of the next month's tax liability. This requirement applies when the taxpayer meets the threshold and the Secretary notifies the taxpayer to make prepayments. A prepayment is due on the date a monthly payment is due. The prepayment must equal at least sixty five percent (65%) of any of the following:

(1) The amount of tax due for the current month.

(2) The amount of tax due for the same month in the preceding year.

(3) The average monthly amount of tax due in the preceding calendar year."

SECTION 2.11. G.S. 143-59.1(a) reads as rewritten:

"(a) Ineligible Vendors. – The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with either of the following:

(1) A vendor if the vendor or an affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina. ~~The~~ Upon request, the Secretary of Revenue shall provide the Secretary of Administration ~~periodically with a list of vendors to which~~ or another entity to which this Article applies verification whether this section ~~applies.~~applies to a specific entity.

(2) A vendor if the vendor or an affiliate of the vendor incorporates or reincorporates in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the stock of the corporation incorporated in the tax haven country."

SECTION 2.12. G.S. 105-241(b)(2a) reads as rewritten:

"(2a) Motor fuel taxes. – A taxpayer that ~~is required to file~~ files an electronic return under Subchapter V of this Chapter or Article 3 of Chapter 119 of the General Statutes must pay the tax by electronic funds transfer."

SECTION 2.13. Effective when it becomes law, but expiring at the same time as Section 1 of S.L. 2011-296 expires (currently July 1, 2013), G.S. 161-10(a), as rewritten by S.L. 2011-296, reads as rewritten:

"**§ 161-10. Uniform fees of registers of deeds.**

(a) Except as otherwise provided in this Article, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. – For registering or filing any instrument for which no other provision is made by this section, the fee shall be twenty-six dollars ($26.00) for the first 15 pages plus four dollars ($4.00) for each additional page or fraction thereof.

~~When a subsequent instrument, as defined in G.S. 161-14.1(a)(3), is presented for registration with reference to more than one original instrument for which recording data are required to be indexed pursuant to G.S. 161-14.1(b), the fee shall be an additional twenty-five dollars ($25.00) for each additional reference.~~ For any instrument that assigns more than one security instrument as defined in G.S. 45-36.4(18) by reference to previously recorded instrument recording data that are required to be indexed pursuant to G.S. 161-14.1(b), the fee shall be an additional ten dollars ($10.00) for each additional reference.

When a document is presented for registration that consists of multiple instruments, the fee shall be an additional ten dollars ($10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

...."

SECTION 2.14.(a) G.S. 45-102(6) reads as rewritten:

"(6) The address, telephone number, and other contact information for the ~~consumer complaint section~~ State Home Foreclosure Prevention Project of the Housing Finance Agency. ~~Office of Commissioner of Banks, or, alternatively, if the loan is serviced by a credit union, the address, telephone number, and other contact information for the consumer complaint section of the Credit Union Division.~~"

SECTION 2.14.(b) G.S. 45-103(a) reads as rewritten:

"(a) Within three business days of mailing the notice required by G.S. 45-102, the mortgage servicer shall file certain information with the Administrative Office of the Courts. The filing shall be in an electronic format, as designated by the Administrative Office of the Courts, and shall contain the name and address of the borrower, the due date of the last scheduled payment made by the borrower, and the date the notice was mailed to the borrower. The Administrative Office of the Courts shall establish an internal database to track information required by this section. The ~~Commissioner of Banks~~ Housing Finance Agency shall design and develop the State Home Foreclosure Prevention Project database, in consultation with the Administrative Office of the

Courts. Only the Administrative Office of the Courts, ~~the Office of Commissioner of Banks,~~ the Housing Finance Agency, and the clerk of court as provided by G.S. 45-107 shall have access to the database."

SECTION 2.14.(c) G.S. 45-104 reads as rewritten:

"**§ 45-104. State Home Foreclosure Prevention Project and Fund.**

(a) ~~The Commissioner of Banks is authorized to establish the State Home Foreclosure Prevention Project.~~ The purpose of the State Home Foreclosure Prevention Project is to seek solutions to avoid foreclosures for home loans. ~~In developing the Project, the Commissioner~~ The Project may include input from HUD-approved housing counselors, community organizations, the Credit Union Division and other State agencies, mortgage lenders, mortgage servicers, and other partners. The Housing Finance Agency shall administer the Project.

(b) There is established a State Home Foreclosure Prevention Trust Fund to be managed and maintained by the Housing Finance Agency. The funds shall be held separate from any other funds received by ~~either the Office of the Commissioner of Banks or~~ the Housing Finance Agency in trust for the operation of the State Home Foreclosure Prevention Project.

(c) Upon the filing of the information required under G.S. 45-103, the mortgage servicer shall pay a fee of seventy-five dollars ($75.00) to the State Home Foreclosure Prevention Trust Fund. The fee shall not be charged more than once for a home loan covered by this act. The ~~Office of the Commissioner of Banks~~ Housing Finance Agency shall collect the fee. Upon receipt of the fee the Housing Finance Agency~~Commissioner~~ shall deposit the funds ~~into a separate account. The funds shall be transferred no less than monthly~~ into the State Home Foreclosure Prevention Trust Fund. The Housing Finance Agency shall manage the State Home Foreclosure Prevention Trust Fund.

(d) The Housing Finance Agency shall use funds from the State Home Foreclosure Prevention Trust Fund to compensate performance-based service contracts or other contracts and grants necessary to implement the purposes of this act in the following manner:

(1) An amount, not to exceed the greater of two million two hundred thousand dollars ($2,200,000) or thirty percent (30%) of the funds per year, to cover the administrative costs of the operation of the program by ~~the Office of the Commissioner of Banks and~~ the Housing Finance Agency, including managing on behalf of the Administrative Office of the Courts the database identified in G.S. 45-103, expenses associated with informing homeowners of State resources available for foreclosure prevention, expenses associated with connecting homeowners to available resources, and assistance to homeowners and counselors in communicating with mortgage servicers.

(2) An amount, not to exceed the greater of three million four hundred thousand dollars ($3,400,000) or forty percent (40%) per year, to make grants to or reimburse nonprofit housing counseling agencies for providing foreclosure prevention counseling services to homeowners involved in the State Home Foreclosure Prevention Project.

(3) An amount, not to exceed thirty percent (30%) of the total funds collected per year, to make grants to or reimburse nonprofit legal

service providers for services rendered on behalf of homeowners in danger of defaulting on a home loan to avoid foreclosure, limited to legal representation such as negotiation of loan modifications or other loan work-out solutions, defending homeowners in foreclosure or representing homeowners in bankruptcy proceedings, and research and counsel to homeowners regarding the status of their home loans.

(4) Any funds remaining in the State Home Foreclosure Prevention Trust Fund as of June 30, 2011, and any funds remaining in the State Home Foreclosure Prevention Trust Fund upon the expiration of each subsequent fiscal year shall be directed to the North Carolina Housing Trust Fund.

(e) The Housing Finance Agency shall have the discretion to enter into an agreement to administer funds under subdivisions (2) and (3) of subsection (d) of this section in a manner that complements or supplements other State and federal programs directed to prevent foreclosures for homeowners participating in the State Home Foreclosure Prevention Project."

SECTION 2.14.(d) G.S. 45-105 reads as rewritten:

"**§ 45-105. Extension of foreclosure process.**

The ~~Commissioner of Banks upon referral from the~~ Housing Finance Agency shall review information provided in the database created by G.S. 45-103 to determine which home loans are appropriate for efforts to avoid foreclosure. If the ~~Commissioner~~ Housing Finance Agency reasonably believes, based on a full review of the loan information, the mortgage servicer's loss mitigation efforts, the borrower's capacity and interest in staying in the home, and other appropriate factors, that further efforts by the State Home Foreclosure Prevention Project offer a reasonable prospect to avoid foreclosure on primary residences, the ~~Commissioner~~ Executive Director of the Housing Finance Agency shall have the authority to extend one time under this Article the allowable filing date for any foreclosure proceeding on a primary residence by up to 30 days beyond the earliest filing date established by the pre-foreclosure notice. If the ~~Commissioner~~ Executive Director of the Housing Finance Agency makes the determination that a loan is subject to this section, the ~~Commissioner~~ Housing Finance Agency shall notify the borrower, mortgage servicer, and the Administrative Office of the Courts. ~~If the mortgage servicer is a state or federally chartered credit union, the Commissioner shall also notify the Administrator of the Credit Union Division of the determination.~~"

SECTION 2.14.(e) G.S. 45-106 reads as rewritten:

"**§ 45-106. Use and privacy of records.**

The data provided to the Administrative Office of the Courts pursuant to G.S. 45-103 shall be exclusively for the use and purposes of the State Home Foreclosure Prevention Project developed by the Commissioner of Banks and administered by the Housing Finance Agency in accordance with G.S. 45-104. The information provided to the database is not a public record, except that a mortgage lender and a mortgage servicer shall have access to the information submitted only with regard to its own loans. ~~Any notice provided by the Commissioner to the Administrator of the Credit Union Division under G.S. 45-105 is not a public record.~~ Provision of information to the Administrative Office of the Courts for use by the State Home Foreclosure Prevention

Project shall not be considered a violation of G.S. 53B-8. A mortgage servicer shall be held harmless for any alleged breach of privacy rights of the borrower with respect to the information the mortgage servicer provides in accordance with this Article."

SECTION 2.14.(f) Section 5 of S.L. 2008-226 reads as rewritten:

"**SECTION 5.** The ~~Office of the Commissioner of Banks~~ Housing Finance Agency shall report to the General Assembly describing the operation of the program established by this act not later than May 1 of each year until the funds are completely disbursed from the ~~reserve.~~ State Home Foreclosure Prevention Trust Fund. Information in the report shall be presented in aggregate form and may include the number of clients helped, the effectiveness of the funds in preventing home foreclosure, recommendations for further efforts needed to reduce foreclosures, and provide any other aggregated information the ~~Commissioner~~ Housing Finance Agency determines is pertinent or that the General Assembly requests."

SECTION 2.14.(g) Section 6 of S.L. 2008-226, as amended by Section 9 of S.L. 2010-168, reads as rewritten:

"**SECTION 6.** Section 4 of this act becomes effective July 1, 2008. Sections 1, 2, 3, and 5 become effective November 1, ~~2008, and expire May 31, 2013.~~ 2008. The remainder of this act is effective when it becomes law."

SECTION 2.14.(h) This section becomes effective December 1, 2012. The North Carolina Housing Finance Agency shall assume the responsibilities designated in this section for operation of the State Home Foreclosure Prevention Project no later than December 31, 2012.

PART III. MOTOR VEHICLE/PROPERTY TAX CHANGES

SECTION 3.1. G.S. 105-321(f) reads as rewritten:

"(f) Minimal Taxes. – Notwithstanding the provisions of G.S. 105-380, the governing body of a taxing unit that collects its own taxes may, by resolution, direct its assessor and tax collector not to collect minimal taxes charged on the tax records and receipts. Minimal taxes are the combined taxes and fees of the taxing unit and any other units for which it collects taxes, due on a tax receipt prepared pursuant to G.S. 105-320 ~~or on a tax notice prepared pursuant to G.S. 105-330.5,~~ in a total original principal amount that does not exceed an amount, up to five dollars ($5.00), set by the governing body. The amount set by the governing body should be the estimated cost to the taxing unit of billing the taxpayer for the amounts due on a tax receipt or tax notice. Upon adoption of a resolution pursuant to this subsection, the tax collector shall not bill the taxpayer for, or otherwise collect, minimal taxes but shall keep a record of all minimal taxes by receipt number and amount and shall make a report of the amount of these taxes to the governing body at the time of the settlement. These minimal taxes shall not be a lien on the taxpayer's real property and shall not be collectible under Article 26 of this Subchapter. A resolution adopted pursuant to this subsection must be adopted on or before June 15 preceding the first taxable year to which it applies and remains in effect until amended or repealed by resolution of the taxing unit. A resolution adopted pursuant to this subsection shall not apply to taxes on registered motor vehicles."

SECTION 3.2. G.S. 105-330.2 reads as rewritten:

"**§ 105-330.2. (Effective July 1, 2013 – See Editor's note) Appraisal, ownership, and situs.**

...

(b1) Valuation Appeal. – The owner of a classified motor vehicle may appeal the appraised value ~~or taxability~~ of the vehicle by filing a request for appeal with the assessor within 30 days of the date taxes are due on the vehicle under G.S. 105-330.4. An owner who appeals the appraised value ~~or taxability~~ of a classified motor vehicle must pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.

The combined tax and registration notice or tax receipt for a classified motor vehicle must explain the right to appeal the appraised value ~~and taxability~~ of the vehicle. A lessee of a vehicle that is required by the terms of the lease to pay the tax on the vehicle is considered the owner of the vehicle for purposes of filing an appeal under this subsection. Appeals filed under this subsection shall proceed in the manner provided by G.S. 105-312(d).

(b2) Exemption or Exclusion Appeal. – The owner of a classified motor vehicle may appeal the vehicle's eligibility for an exemption or exclusion by filing a request for appeal with the assessor within 30 days of the assessor's initial decision on the exemption or exclusion application filed by the owner pursuant to G.S. 105-330.3(b). Appeals filed under this subsection shall proceed in the manner provided by G.S. 105-312(d).

...."

SECTION 3.3. G.S. 105-330.3 reads as rewritten:

"**§ 105-330.3. (Effective July 1, 2013 – See Editor's note) Listing requirements for classified motor vehicles; application for exempt status.**

...

(a1) Unregistered Vehicles. – The owner of an unregistered classified motor vehicle must list the vehicle for taxes by filing an abstract with the assessor of the county in which the vehicle is located on or before January 31 following the date the owner acquired the unregistered vehicle or, in the case of a registration that is not renewed, January 31 following the date the registration expires, and on or before January 31 of each succeeding year that the vehicle is unregistered. If a classified motor vehicle required to be listed pursuant to this subsection is registered ~~during the calendar~~ before the end of the fiscal year ~~in~~ for which it was ~~listed, the vehicle is taxed for the fiscal year that opens in the calendar year of listing as an unregistered vehicle.~~ required to be listed, the following applies:

(1) The vehicle is taxed as a registered vehicle, and the tax assessed pursuant to this subsection for the fiscal year in which the vehicle was required to be listed shall be released and/or refunded.

(2) For any months for which the vehicle was not taxed between the date the registration expires and the start of the current registered vehicle tax year, the vehicle is taxed as an unregistered vehicle as follows:

a. The value of the motor vehicle is determined as of January 1 of the year in which the registration of the motor vehicle expires.

b. In computing the taxes, the assessor must use the tax rates and any additional motor vehicle taxes of the various taxing units in effect on the date the taxes are computed.

c. The tax on the motor vehicle is the product of a fraction and the number of months for which the vehicle was not taxed between the date the registration expires and the start of the current registered vehicle tax year. The numerator of the fraction is the product of the appraised value of the motor vehicle and the tax rate of the various taxing units. The denominator of the fraction is 12.

d. Interest accrues on unpaid taxes for these unregistered classified motor vehicles at the rate of five percent (5%) for the remainder of the month following the month the taxes are due. Interest accrues at the rate of three-fourths percent (3/4%) for each following month until the taxes are paid, unless the notice is prepared after the date the taxes are due. In that circumstance, the interest accrues beginning the second month following the date of the notice until the taxes are paid.

e. For any months between the date the registration expires and the start of the current registered vehicle tax year that the vehicle is taxed as an unregistered vehicle pursuant to G.S. 105-312, the vehicle is not taxed as provided in this subsection.

(3) A vehicle required to be listed pursuant to this subsection that is not listed by January 31 and is not registered before the end of the fiscal year for which it was required to be listed is subject to discovery pursuant to G.S. 105-312.~~G.S. 105-312, unless the vehicle has been taxed as a registered vehicle for the current year.~~

(b) Exemption or Exclusion. – The owner of a classified motor vehicle who claims an exemption or exclusion from tax under this Subchapter has the burden of establishing that the vehicle is entitled to the exemption or exclusion. The owner may establish prima facie entitlement to exemption or exclusion of the classified motor vehicle by filing an application for exempt status with the ~~assessor.~~ assessor within 30 days of the date taxes on the vehicle are due. When an approved application is on file, the assessor must omit from the tax records the classified motor vehicles described in the application. An application is not required for vehicles qualifying for the exemptions or exclusions listed in G.S. 105 282.1(a)(1). The remaining provisions of G.S. 105 282.1 do not apply to classified motor vehicles.

...."

SECTION 3.4. G.S. 105-330.4 reads as rewritten:

"**§ 105-330.4. (Effective July 1, 2013 – See Editor's note) Due date, interest, and enforcement remedies.**

...

(c) Remedies. – The enforcement remedies in this Subchapter apply to unpaid taxes on an unregistered classified motor vehicle. The enforcement remedies in this Subchapter do not apply to unpaid taxes on a registered classified motor ~~vehicle.~~vehicle for which the tax year begins on or after August 1, 2013.

(d) Tax payments submitted by mail are deemed to be received as of the date shown on the postmark affixed by the United States Postal Service. If no date is shown

on the postmark or if the postmark is not affixed by the United States Postal Service, the tax payment is deemed to be received when the payment is received ~~in the office of the tax collector.~~ by the collecting authority. In any dispute arising under this subsection, the burden of proof is on the taxpayer to show that the payment was timely made."

SECTION 3.5. G.S. 105-330.5(e) is repealed.

SECTION 3.6. Effective July 1, 2011, Section 13 of S.L. 2005-294, as amended by Section 31.5 of S.L. 2006-259, Section 22(b) of S.L. 2007-527, and Section 65 of S.L. 2008-134, reads as rewritten:

"**SECTION 13.** Sections 4 and 8 of this act become effective January 1, 2006. Sections 1, 2, 3, 5, 6, 7, 10 and 11 of this act become effective July 1, ~~2011,~~2013, or when the Division of Motor Vehicles of the Department of Transportation and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. Sections 12 and 13 of this act are effective when they become law. Nothing in this act shall require the General Assembly to appropriate funds to implement it for the biennium ending June 30, 2007."

PART IV. EFFECTIVE DATE

SECTION 4.1. Except as otherwise provided, this act is effective when it becomes law.

2011-2012 General Assembly

Bill Draft 2011-SVxz-13: Revenue Laws Tech., Clarifying, & Admin Chngs.

Committee:	Revenue Laws Study Committee	**Date:**	May 2, 2012
Introduced by:		**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	2011-SVxz-13		

SUMMARY: ***This legislative proposal includes several technical, administrative, and clarifying changes to the revenue laws and related statutes, many of which were requested by the Department of Revenue.***

This proposal and a summary was initially distributed at the April 11, 2012, meeting. Additional changes have since been added to the bill. Explanations of the new sections are shaded in gray on this analysis. The bill has also been reorganized so that the technical changes appear in Part I and the clarifying and administrative changes appear in Part II. Part III contains changes related to the combined motor vehicle registration and property tax collection system. Those changes are also clarifying and/or administrative in nature, but have been set out separately since they were not included in the last version.

EFFECTIVE DATE: Except as otherwise provided, this bill would become effective when it becomes law.

BILL ANALYSIS:

Section	Explanation
	PART I: TECHNICAL CHANGES
1.1	A taxpayer is allowed a deduction for the amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a *tax credit* allowed against the corporation's federal taxable income. Section 1603 of ARRTA directs the Treasury to provide cash payments, or grants, to eligible persons who place in service specified energy property and apply for the payments. The purpose of section 1603 is to reimburse eligible applicants for a portion of the expense of such property. A section 1603 grant recipient is required to reduce the basis of the asset. This change would allow a taxpayer to reduce his or her State taxable income if the taxpayer receives a section 1603 *grant payment* rather than a credit under sections 45 or 48 of the Code.

1.2	This section makes changes to the sales and use tax exemption statute with regard to motor fuels and installation and delivery charges. Motor fuels are subject either to the motor fuels tax or to the sales tax, but not both. Dyed diesel and dyed kerosene are examples of motor fuels that are subject to the sales tax, but are nevertheless defined as motor fuels. This change in the sales tax exemption statute makes it clear that, to the extent a motor fuel is taxed under Article 36C (Gasoline, Diesel, and Blends), it is exempt from sales and use tax. This section also amends the sales tax exemptions for delivery and installation charges so that the language is parallel. It adds the phrase "similar billing document," which currently appears in the exemption for delivery charges, to the exemption for installation charges. It adds the phrase "at the time of sale," which currently appears in the exemption for installation charges, to the exemption for delivery charges.
1.3	This is a technical change because the tax on manufacturing fuel was repealed, effective July 1, 2010.
1.4	This is a technical change because the existing statutory catchline refers to an Article that does not exist.
1.5	This section updates from January 1, 2011, to January 1, 2012 the reference to the Internal Revenue Code. This change keeps the statute up to date, but does not result in any substantive changes because there have not been any federal tax law changes since January 1, 2011 that impact the calculation of North Carolina taxable income.
1.6	This section adds an additional Code reference to the statute that governs when a return, report, payment, or any other document that is mailed to the Department is timely filed. Code section 7503 addresses when the due date falls on a Saturday, Sunday, or a holiday.
1.7	This is a technical change to correct a statutory reference.
1.8	This section conforms the statute on the scope of the local use tax so that it is consistent with the parallel statute for the State use tax, which was amended during the 2011 session. The 2011 change[1] was a clarifying change.
1.9	S.L. 2011-72 authorized certain cities to establish a municipal service district for the purpose of converting private residential streets to public streets. The act was designed to address 14 residential developments in the Town of Morrisville that were seeking to convert private streets to public streets. After the bill passed, it was discovered that some of the developments were created under the Condominium Act rather than the Planned Development Act, which the bill amended. This section makes the necessary conforming changes.

[1] S.L. 2011-330, s. 25(a).

1.10	This section corrects several errors in the 2011 special license plate act.[2] It adds the "Mountains-to-Sea Trail" plate to the list of plates that may be on a background other than the First in Flight background, which was the original intent. Under current law, the authorization for the plate states that it "shall bear the phrase 'Mountains-to-Sea Trail' with a background designed by the Friends of the Mountains-to-Sea Trail," suggesting that the organization may design its own background. However, in order for an organization to have a background other than First in Flight, it must be authorized in G.S. 20-63. This section also corrects errors with regard to the fees for the Sustainable Fisheries and the Morgan Horse Club plates.
PART II: CLARIFYING AND ADMINISTRATIVE CHANGES	
2.1	This change would allow a wholesale or retail dealer of other tobacco products to provide security to the Secretary in the form of an irrevocable letter of credit as an alternative to a bond. An irrevocable letter of credit would typically be used by a foreign company that would be unable to obtain a bond because it does not have assets in this country. This form of security is consistent with what is currently allowed under the motor fuels tax statutes.
2.2	S.L. 2011-12 added synthetic cannabinoids to the list of controlled substances. No corresponding changes were made to the unauthorized substance tax laws. Therefore, under current law, they would be grouped with "other controlled substances" and subject to tax at a rate of $200 per gram. Marijuana is taxed at $3.50 per gram. This section would tax synthetic cannabinoids at the same rate as marijuana, effective when the S.L. 2011-12 became law.

[2] S.L. 2011-392.

2.3	Holding companies are subject to an annual franchise tax, which is capped at $75,000. A holding company is currently defined as one that receives more than 80% of its gross income from corporations in which it owns, directly or indirectly, more than 50% of the outstanding voting stock or capital interests. However, a corporation whose only asset is an investment in subsidiaries and has no income cannot meet the 80% test because the denominator would be zero. This section expands the definition of a holding company to address this situation. The Department has indicated that this is a clarifying change, not a substantive one. A question has arisen about this specific fact pattern where a taxpayer is clearly a holding company in that all of its assets are investments in subsidiaries. For the year in question, the holding company had no income. Therefore, there would be $0 in income from subsidiaries and $0 in total income. Under a strict application of G.S. 105-120.2, $0 divided by $0 would result in an undefined mathematical value. Because it is undefined, it cannot be determined if it exceeds 80%. Alternatively, if one of the subsidiaries of the holding company had issued a dividend of as little as one cent, then 100% of the income would be coming from investments in subsidiaries. The Department believes that this interpretation is not what the General Assembly intended. The Department's interpretation is that it was a holding company and subject to the cap of $75,000 on franchise tax.
2.4	This section makes two changes to sales tax definitions in order to conform to the Streamlined definitions, and it updates the reference to the most current version of the Streamlined Agreement dated December 19, 2011.
2.5	This section clarifies the general sourcing provisions to conform to the Streamlined requirements. It was noted during the 2011 Annual Compliance Review that the existing statute was not consistent with the Streamlined requirements.
2.6	Restores language that was inadvertently stricken from the statute.

2.7	This section restores language relating to the application of use tax to items given away by merchants, which was inadvertently deleted in a 2009 budget provision. The language was originally added to the definition of "sale or selling" in 1996 as the result of a court case.[3] The language was intended to restrict the application of that case, a broad application of which could be interpreted in such a way so as to eliminate the use tax. In 1996, the Revenue Laws Study Committee recommended limiting the application of the decision to the facts of that case, which involved food given away by restaurants. In 2009, a number of sales tax statutes were amended to address digital property. While amending those statutes, a number of stylistic and technical changes were also made. The language dealing with items given away by merchants was removed with the intent that it be located elsewhere in the sales and use tax statutes as a technical change. However, it was never relocated. This section restores the language by placing it in a new statutory section, effective the date that the 2009 deletion became effective since there was no intent to remove it.
2.8	This section makes two changes related to sales tax refunds for interstate carriers. First, it modifies the reference to "them" to make it clear that, for purposes of calculating a refund on certain cars, parts, fuel, and repair parts, an interstate carrier must include all motor vehicles, railroad cars, locomotives, and airplanes it owns operated both inside and outside the State in the denominator. Second, it clarifies that airplane miles are not in this State if the airplane only flies over North Carolina but does not take off or land in the State.

[3]The use tax, first enacted in 1939, is the complement to the sales tax and applies to the storage, use, or consumption in this State of tangible personal property. Use tax accounts for approximately 5% of total sales and use tax collections. A merchant is liable for use tax on property it *uses* in its business, such as furniture, equipment, décor, or promotional giveaways. Items *sold* by the merchant, however, are not subject to use tax because sales tax will apply when the items are sold at retail. With regard to items given away free of charge, the general rule in this State, and virtually all states, is that a retailer is liable for sales and use tax on those items. Until 1993, the following items were considered used, not sold, and thus subject to use tax: meals provided free to a merchant's employees, food given away to the merchant's patrons, and matches given away to patrons, other than matches given away along with the sale of cigarettes. A group of restaurants appealed the assessment of the tax, claiming that the items should be considered sold. In *Matter of Rock-Ola Café*, 111 N.C.App. 683 (1993), the North Carolina Court of Appeals agreed with the restaurants that these items should be considered sold along with the food the restaurant sold as part of its business. However, the Revenue Laws Study Committee, in its report to the 1996 Regular Session, concluded that the Court's opinion was overly broad in its rationale. The rationale, that the cost of these items is recovered by the sales of other items, taken literally and if applied broadly, could be interpreted to eliminate the use tax altogether in that the cost of all of a merchant's purchases are ultimately covered by the price of sold items. The Committee recommended, and the General Assembly enacted, the language in this section to limit the application of the court's opinion to the facts of that case, which dealt specifically with restaurants. Under this language, property given away by a merchant is exempt from use tax only in the case of restaurants that provide free meals to employees or free bar food to patrons. The bill that was ultimately enacted added language to exempt items of inventory given away to a customer free of charge on the condition that the customer buy similar property ("buy one, get one free").

2.9	A direct pay permit authorizes the holder to purchase property that is subject to sales and use tax without paying the tax to the seller. A person who purchases an item under a direct pay permit is liable for use tax, which is payable when the property is placed in use or the service is received. A person can apply for a direct pay permit if the person purchases an item whose tax status cannot be determined at the time of purchase, and either: • The place of business where the item will be used is not known at the time of purchase and a different tax consequence applies depending on where the item is used, or • The manner in which the item will be used is not known at the time of purchase and one or more of the potential uses is taxable but others are not taxable. Generally speaking, a direct pay permit is not intended to allow purchasers to "shop" for a lower tax rate. It was originally designed to address situations where a purchaser of machinery, for example, did not know at the time of purchase how the machinery was going to be used and, therefore, whether it would be subject to sales tax at the general rate, exempt from tax, or subject to the 1%/$80 rate. In those cases, however, the property was always going to be used in North Carolina. The Department is aware of a situation where a retailer that has purchased items from NC vendors and has taken delivery of those items in NC wants to use a direct pay permit arguing that the items may be shipped out of state at some later date for use in another state. This section adds the words "in this State" to make it clear that a direct pay permit may not be used to avoid paying NC sales tax in this way. A person who purchases telecommunications service under a direct pay permit must file a return and pay the tax due monthly to the Secretary. This section adds the word "quarterly" so that the filing frequency is consistent with the filing frequency for general State and local sales tax remitters.[4] By providing for quarterly filing, this change would conform the statute to current practice at the Department.

[4]A taxpayer who is consistently liable for less than $100 a month in State and local sales and use taxes must file a return and pay the taxes due on a quarterly basis. A taxpayer who is consistently liable for at least $100 a month but less than $20,000 a month in State and local sales and use taxes must file a return and pay the taxes due on a monthly basis. (G.S. 105-164.16.)

2.10	There is an excise tax imposed on piped natural gas received for consumption in this State, which is in lieu of the sales and use tax. The tax is payable on a monthly basis. Under current law, a taxpayer who is consistently liable for at least $10,000 of tax a month must make a monthly prepayment of the next month's liability. This section would change from $10,000 to $20,000 the prepayment threshold for the tax on piped natural gas, the purpose of which is to be consistent with the prepayment threshold for retailers required to remit sales and use tax.[5] This change does not change the amount of excise tax revenue remitted to the General Fund, but it does change by one month the timing of the payment for the year of the transition to the higher threshold. The Department indicates that it knows of only one company that would be affected by increasing the threshold to $20,000.
2.11	Generally speaking, the State may not contract with foreign vendors that refuse to collect use tax, where applicable, on sales delivered to North Carolina. G.S. 143-59.1 requires the Department to periodically provide to the Secretary of Administration a list of ineligible vendors based on this requirement. This section modifies the obligation on the Department such that it need only verify, upon request, a vendor's ineligibility in lieu of providing a periodic list. The Department does not receive the information in order to adhere to the requirements of the current statute.
2.12	This section conforms the statute to current practice at the Department. If a taxpayer files a return electronically, then the taxpayer must pay the tax due before the taxpayer may submit the return.
2.13	This section removes the confusion caused by the new fee applicable to the recording of subsequent instruments by eliminating the fee and imposing a $10 fee for an instrument that assigns more than one security instrument by reference to a previously recorded instrument. S.L. 2011-296 changed the fees collected by register of deeds for the purpose of simplifying their collection and remittance. As part of the legislation, a new fee became applicable to the indexing and filing of "subsequent instruments." Several registers of deeds have questioned how to apply the new fee applicable to subsequent instruments that contain references to multiple recorded documents, such as cancellations of multiple deeds of trust or substitution of trustee in multiple documents.

[5]For sales and use tax, the threshold limit of $10,000 was enacted in 2001 as a means to accelerate the payment of sales and use tax dollars into the General Fund for fiscal year 2001-02. Prior to this change, the threshold amount for making bimonthly payments was $20,000. In the years following 2001, the sales and use tax rate, at its highest, reached 7.75%. The lowering of the threshold amount along with the increase in the tax rate subjected more retailers to the most extensive sales tax remittance requirements. Consequently, many small retailers expressed a cash flow hardship with the pre-payment requirement. In 2010, the General Assembly phased in a restoration of the $20,000 prepayment threshold. The change decreased the number of retailers required to submit a prepayment of 65% of the amount of sales tax revenue to be remitted for the following month.

2.14	This section makes conforming changes to the statutes dealing with the State Home Foreclosure Prevention Project (SHFPP). The SHFPP was created by the General Assembly in 2008[6] as an emergency program and was expanded and extended in 2010[7] to cover all homeowners. The program is an effort to reduce unnecessary foreclosures providing homeowners with free resources, such as counseling, as they work with servicers to create alternatives to foreclosure. In 2011, the administration and staffing of SHFPP homeowner and counseling activities was transferred to the NC Housing Finance Agency, effective July 1, 2011.[8] Under that legislation, the Office of the Commissioner of Banks retained administration of the pre-foreclosure filings database, servicing invoicing, and the granting of 30-day extensions. This section would complete the transfer of all program activities to the NC Housing Finance Agency and would remove the program sunset.

PART III: COMBINED MOTOR VEHICLE REGISTRATION/PROPERTY TAX CHANGES

In 2005, the General Assembly created a framework establishing a combined system for motor vehicle registration renewal and property tax collection. Originally, the act was to become effective the earlier of January 1, 2009, or the date that the Department of Revenue and the Division of Motor Vehicles certified that an integrated computer system is in operation. The effective date has since been extended and is currently set to go into effect July 1, 2013. Under the new system, the taxpayer/motor vehicle owner will receive one bill for property taxes and the DMV license renewal, and DMV will be the collecting authority. Counties will still determine the value and the taxability situs of motor vehicles. A number of conforming changes are needed to fully implement the combined system, which goes into effect July 1, 2013. Part III of this bill consists of those changes.

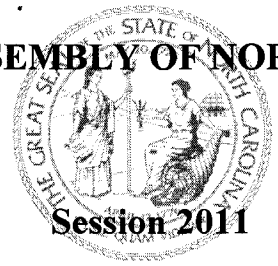
3.1	Current law permits the governing body of a taxing unit to pass a resolution directing its tax collector not to collect minimal taxes, defined as up to $5.00, charged on tax records and receipts. This section would exempt taxes on registered motor vehicles for two reasons: (1) a minimum of $28 is collected for motor vehicle registration; and (2) DMV, not the counties, will be the collecting authority. Therefore, the minimal tax provision is not applicable with regard to combined motor vehicle and property tax collection.

[6] S.L. 2008-226.
[7] S.L. 2010-168.
[8] S.L. 2011-288.

3.2	A taxpayer may appeal motor vehicle taxes on a number of grounds: the valuation by the county, the denial of an application for exemption or exclusion, and on the grounds that the county does not have authority to tax the vehicle because the situs of the vehicle is in another taxing district. The term "taxability" in the appeal statutes has been used to refer to both exemption status and situs, but because there are different time periods that apply depending on the basis of a taxpayer's appeal, the Department recommends separating the statutory provisions.[9] Therefore, this section strikes the term "taxability" from G.S. 105-330.2(b1) so that, as amended, this subsection would apply only to appeals based on valuation. It also creates a new subsection (b2) to address appeals based on an application for exemption or exclusion. Appeals based on a county's authority to tax are covered under current law in G.S. 105-381.
3.3	This section establishes a process for the collection of property tax on an unregistered vehicle. The objective of the process is to ensure that the taxpayer is not double-taxed and that property taxes are paid on motor vehicles that a person owns even if it is not registered. If a person does not register or renew registration, then the person would be required to list the vehicle with the county assessor. The listing will generate a tax bill. However, if the person subsequently registers or renews the tag for the vehicle, then DMV will charge the person for the registration plus the property tax. This provision allows a county to ignore the listing to the extent the person registered or renewed within the same year.
3.4	This section clarifies that counties would have authority to use collection remedies for unpaid motor vehicle taxes that were billed prior to the effective date of the combined motor vehicle/property tax system. The August 1 date is used because the tax year for July renewals begins August 1. This section also changes the term "tax collector" to "collecting authority" because under the new system, DMV and not the county tax assessor or tax collector will be the collecting authority.
3.5	This section repeals an unnecessary statute that relates to small underpayments and overpayments of motor vehicle taxes. Specifically, if a taxpayer fails to remit the additional $1.00 charged for payments that are mailed rather than paid in-person, the collecting authority is not permitted to bill or attempt to collect the additional $1.00. However, there is no longer a $1.00 charge for mailed in payments so the provision is unnecessary.
3.6	This section is a conforming change to the effective date. When the effective date for the implementation of the combined system was changed, this particular session law was missed.

[9] A taxpayer has 30 days to appeal a determination of value or eligibility for an exemption or exclusion. However, there is a five-year period to appeal an "illegal" tax under G.S. 105-381.

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

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 2, 2012

TO: Revenue Laws Study Committee

FROM: Sandra Johnson
Fiscal Research Division

RE: 2011-SVxz13 vs 7

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:					
Section 17: Register of Deeds (State)		$0	$0	$0	$0
Section 17: Register of Deeds (Local)		**No Estimate Available**			
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County Register of Deeds Offices

EFFECTIVE DATE: Except as otherwise provided, effective when the bill becomes law.

BILL SUMMARY:
Section 2.13 of the bill amends S.L. 2011-296, legislation enacted to simplify the fees charged for registering instruments with register of deeds offices. This bill modifies $25.00 fee created during the 2011 session in S.L. 2011-296 for registering subsequent instruments. Prior to the enactment of S.L. 2011-296, a $10.00 fee applied to the registration of subsequent/multiple instruments. The language and fee schedule for registering subsequent instruments in this proposal reduces the $25.00 fee to $10.00 making it consistent with the fee schedule used in previous years.

The bill also modifies the definition of subsequent instruments referencing G.S. 45-36.4(18). This change clarifies that subsequent instruments are documents intended to modify, amend, supplement or replace any previously registered instrument.

ASSUMPTIONS AND METHODOLOGY:

No State Impact
Changes included in the Revenue Laws Technical Corrections proposal modify the register of deeds fee schedule created during the 2011 Session with S.L. 2011-296. S.L. 2011-296 revised the fee schedule used at register of deeds offices and the amount of revenue that the registrars remit to the State. Though the technical corrections bill slightly reduces the amount of revenue collected through the registrar's offices, the amendment does not impact State funds. Register of deeds, under this proposal must still remit to the State $6.20 per registered document as set forth in S.L. 2011-296.

Local Impact
The local fiscal impact of the technical corrections bill remains unknown due to a lack of data. Conversations with the North Carolina Association Register of Deeds representatives suggest that the impact will be minimal. This proposal changes the register of deeds fee schedule reducing the fees for registering subsequent instruments from $25.00 per instrument to $10.00 per instrument. Should the proposal become law, the fees for registering subsequent instruments would be congruent with the fee schedule utilized in prior years.

SOURCES OF DATA: North Carolina Association Register of Deeds

TECHNICAL CONSIDERATIONS: None

APPENDIX A

AUTHORIZING LEGISLATION
ARTICLE 12L OF CHAPTER 120
OF THE
GENERAL STATUTES

ALL MATERIALS DISTRIBUTED AT MEETINGS MAY BE VIEWED ON THE COMMITTEE'S WEBSITE:
http://www.ncleg.net/committees/revenuelaws

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 20 members as follows:

(1) Ten members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.

(2) Ten 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; 2009-574, s. 51.1.)

§ 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.

(c) The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66 of the General Statutes, as enacted by S.L. 2006-151, has on the issues listed in this section to determine if any changes to the law are needed:

(1) Competition in video programming services.

(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.

(3) The deployment of broadband in the State.

The Committee must review the impact of this Article on these issues every two years and report its findings to the North Carolina General Assembly. The Committee must make its first report to the 2008 Session of the North Carolina General Assembly. (1997-483, s. 14.1; 2006-151, s. 21.)

§ 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

DISPOSITION OF COMMITTEE'S RECOMMENDATIONS TO THE 2011 REGULAR SESSION OF THE 2011 GENERAL ASSEMBLY

ALL MATERIALS DISTRIBUTED AT MEETINGS MAY BE VIEWED ON THE COMMITTEE'S WEBSITE:
http://www.ncleg.net/committees/revenuelaws

DISPOSITION OF REVENUE LAWS STUDY COMMITTEE RECOMMENDATIONS TO THE 2011 REGULAR SESSION OF THE 2011 GENERAL ASSEMBLY

SHORT TITLE	SENATE SPONSORS	HOUSE SPONSORS	BILL #	FINAL STATUS*
IRC Update	Hartsell Tillman Newton	Howard Brubaker Starnes Setzer	HB 124 SB 94	Enacted* SL 2011-5, [HB 124]
Business Entity Changes	Hartsell Clodfelter Tillman	Howard Brubaker Luebke Hill	HB 123 SB 93	Enacted* SL 2011-9, [HB 123]
Revenue Laws Technical, Clarifying, & Administrative Changes	Clodfelter Hartsell	Howard Luebke Gibson	HB 122 SB 267	Enacted* SL 2011-330, [SB 267]

* Bills were modified prior to enactment.

APPENDIX C

MEETING AGENDAS

ALL MATERIALS DISTRIBUTED AT MEETINGS MAY BE VIEWED ON THE COMMITTEE'S WEBSITE:
http://www.ncleg.net/committees/revenuelaws

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard ***Rep. Danny McComas*** ***Sen. Bob Rucho***

Wednesday, October 5, 2011
Room 544, Legislative Office Building
9:30 a.m.

I. Welcome and Introduction of Members

II. 2011 Finance Law Changes

- *Trina Griffin and Heather Fennell, Research Division*

III. Introduction to the Machinery Act

- **NC Property Tax Basics**
  Chris McLaughlin, Assistant Professor of Public Law and Government, School of Government
- **Mechanics of the Reappraisal Process**
  David Baker, Director, Local Government Division, Department of Revenue
- **Property Tax Relief Programs**
  Dan Ettefagh, Bill Drafting Division

IV. Implementation of Tax Credit for Children with Special Disabilities and the Shift to Adjusted Gross Income

- *Canaan Huie, General Counsel, Department of Revenue*

V. General Fund Revenue Outlook – September 2011
Barry Boardman, Fiscal Research Division

VI. Adjournment

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard | ***Rep. Danny McComas*** | ***Sen. Bob Rucho***

Wednesday, November 2, 2011
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of Minutes from the October 5, 2011 Meeting

II. Issues Concerning State's Entrance Into A Multistate Agreement for the Purpose of Carrying Out the Nonadmitted and Reinsurance Reform Act of 2010.

- *Rose Vaughn-Williams, Department of Insurance*

III. Forced Combinations

- **Overview of the Law and Outstanding Issues**
  Jonathan Tart, Fiscal Research Division
- **Comments**
  - *Canaan Huie, Department of Revenue*
  - *Todd Lard, Council on State Taxation (COST)*

V. Adjournment

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard | ***Rep. Danny McComas*** | ***Sen. Bob Rucho***

Wednesday, December 7, 2011
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of Minutes from the November 2, 2011 Meeting

II. Financing of Capital Projects
Vance Holloman, Local Government Commission

III. Update on ESC Issues

- **ESC Transfer to Commerce, S.L. 2011-145, Sections 14.5 and 14.5C and S.L. 2011-401**
  The General Assembly transferred the Employment Security Commission to the Department of Commerce as part of the Current Operations and Capital Improvement Act of 2011 and it also authorized Commerce to contract with someone to obtain recommendations to achieve employment security organizational reforms savings.

  Dale Carroll, Deputy Secretary, Department of Commerce

- **Implementation of Reform UI Tax Structure/Expedite Analysis, S.L. 2011-10**
  The General Assembly authorized the Department of Commerce to contract with a consultant to obtain recommendations on how to best achieve Unemployment Trust Fund solvency. Commerce submitted a RFP in October; the period for submitting a proposal to Commerce closed in November.

  Dale Carroll, Deputy Secretary, Department of Commerce

IV. Department of Revenue Directive on Forced Combinations

The General Assembly repealed the Secretary's current statutory authority to require a corporation to file a combined return and replaced it with a new statute that becomes effective January 1, 2012. Under the Secretary's existing authority, a corporation may be required to file a combined return if the Secretary determines its single entity return does not reflect its true earnings in this State. Under the new authority, a corporation may be required to file a combined return if the Secretary determines the corporation's intercompany transactions lack economic substance or are not at fair market value.

The Department of Revenue released a technical bulletin on November 16, 2011. A copy of the directive is included with the meeting materials. The bulletin gives the Department's interpretation of the law change made in S.L. 2011-390.

Canaan Huie, General Counsel, Department of Revenue

V. General Fund Revenue Outlook

Barry Boardman, Fiscal Research Division

VI. Adjournment

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard | ***Rep. Danny McComas*** | ***Sen. Bob Rucho***

Wednesday, January 4, 2012
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of Minutes from the December 7, 2011 Meeting

II. The North Carolina Estate Tax

- **Overview**
  Greg Roney, Research Division
- **Comment**
  Dick Patten, President, American Family Business Institute

III. Update on ESC Issues

- *Lynn Holmes, Assistant Secretary, Division of Employment Security*

IV. Adjournment

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard ***Rep. Danny McComas*** ***Sen. Bob Rucho***

Wednesday, February 1, 2012
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of Minutes from the January 4, 2011 Meeting

II. Local Privilege License Tax Authority

- *Christopher McLaughlin, Assistant Professor of Public Law and Government, UNC School of Government*
- *Andy Ellen, President and General Counsel, NC Retail Merchants' Association*
- *Jim Ahler, Executive Director, NC Association of CPAs*

III. Property Tax Valuation of Business Personal Property

- *Ken Joyner, Lecturer in Public Finance and Government, UNC School of Government*
- *Mack McLamb, Manager, Carlie C's grocery store*
  Jason Wenzel, Counsel, Narron, O'Hale, and Whittington, P.A.
- *David Baker, Director, Local Government Division, Department of Revenue*

IV. Property Tax Appeals Process

- *Cindy Avrette, Research Division*
- *Pat Goddard, Johnston County Tax Assessor*
- *David Baker, Director, Local Government Division, Department of Revenue*

V. Repeal North Carolina Estate Tax

- *Legislative Proposal, Jonathan Tart, Fiscal Research Division*
- *Edwin McLenaghan, Public Policy Analyst, NC Budget & Tax Center*
- David Heinen, Director of Public Policy and Advocacy, N.C. Center for Nonprofits

VI. Adjournment

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard *Rep. Danny McComas* *Sen. Bob Rucho*

Wednesday, March 7, 2012
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of Minutes from the February 1, 2012, Meeting

II. Sales Tax Application Issues:

A. Taxation of Solar Electricity Generating Equipment
Canaan Huie, General Counsel, Department of Revenue

B. Sales Tax and Performance Contracts
Canaan Huie, General Counsel, Department of Revenue

III. Interpretation of Revenue Laws by Secretary of Revenue

- Greg Roney, Legislative Analyst, Research Division
- Chuck Neely, Williams & Mullens, COST
- Andy Ellen, NC Retail Merchant's Association
- Canaan Huie, General Counsel, Department of Revenue

IV. Repeal State Estate Tax

- Jonathan Tart, Fiscal Analyst, Fiscal Research Division
- Alexandra Sirota, NC Budget & Tax Center
- Brian Balfour, John W. Pope Civitas Institute
- David Heinen, NC Center for Nonprofits

V. General Fund Revenue Update
Barry Boardman, Economist, Fiscal Research Division

VI. Adjournment

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard *Rep. Danny McComas* *Sen. Bob Rucho*

Wednesday, April 11, 2012
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of Minutes from the March 7, 2012, Meeting**

II. **Interpretation of G.S. 105-130.5A by Secretary of Revenue: *The Issue of Forced Combinations and Guidelines***
Cindy Avrette, Research Division, NCGA

III. **Extension of Tax Provision: Work Opportunity Tax Credit**
Heather Fennell, Research Division, NCGA

IV. **Collection of NC Income Tax from Out-of-State Real Estate Appraisal Management Companies**
Jonathan Tart, Fiscal Research Division, NCGA

V. **2012 Technical and Administrative Changes Bill**
Trina Griffin, Research Division, NCGA

V. **Adjournment**

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard *Rep. Danny McComas* *Sen. Bob Rucho*

Wednesday, May 2, 2012
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of Minutes from the April 11, 2012, Meeting**

II. **Overview of Committee Proceedings**
Trina Griffin, Research Division, NCGA

III. **Legislative Proposal #1: Expedited Rulemaking for Forced Combinations**
Cindy Avrette, Research Division, NCGA

IV. **Legislative Proposal #2: Unemployment Insurance Changes**
Cindy Avrette, Research Division, NCGA

V. **Legislative Proposal #3: Extend Tax Provisions**
Heather Fennell, Research Division, NCGA
Jonathan Tart, Fiscal Research Division, NCGA

VI. **Legislative Proposal #4: Appraisal Management Companies Reported to DOR**
Greg Roney, Research Division, NCGA
Jonathan Tart, Fiscal Research Division, NCGA

VII. **Legislative Proposal #5: Revenue Laws Technical, Clarifying, and Administrative Changes**
Trina Griffin, Research Division, NCGA

VIII. **Approval of Final Report**

IX. **Adjournment**

APPENDIX D

LETTER TO THE REVENUE LAWS STUDY COMMITTEE REGARDING VALIDITY OF EXECUTIVE ORDER 113 EXTENDING UNEMPLOYMENT BENEFITS

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NORTH CAROLINA GENERAL ASSEMBLY
Legislative Services Office

George R. Hall, Legislative Services Officer

Bill Drafting Division
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Raleigh, NC 27603-5925
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Fax 919-715-5459

Gerry Cohen
Director

April 30, 2012

TO: **Revenue Laws Study Committee**
FROM: **Gerry Cohen, Director of Legislative Drafting**
SUBJECT: **Validity of Executive Order 113 extending Unemployment Benefits**

I have been asked whether Executive Order 113 is sufficient under federal law to constitute approval of extended unemployment benefits, and whether it is valid under our State Constitution. It is my opinion that the Executive Order of the Governor is not sufficient under either State or federal law as outlined below to trigger a benefit extension.

Executive Order 113 was promulgated as a result of P.L. 112-78, which extended certain unemployment benefits from December 31, 2011 to February 29, 2012. Section 201(a)(4) of P.L. 112-78 contains the operative language amending Section 203(f) of the Federal-State Unemployment Compensation Act of 1970. Section 201(c) of P.L. 112-78 states that the act becomes effective as if it had been included in P.L. 111-312. Section 502(b) of Title V of PL 111-312, the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010". That act authorized through 12/31/2011 (and now through 2/29/2012 as provided by P.L. 112-78) the extension of benefits, provides that the extension in a particular state is made only as "***the State may by law provide***" (emphasis added). This language appears twice in that federal law. Section 502(b) is an amendment to Section 203(f) of the Federal-State Unemployment Compensation Act of 1970, P.L. 91-371 as amended. Section 205(f) of that act provides that "State law" is the "unemployment compensation law of the State, approved by the Secretary of Labor." In North Carolina, that law is Chapter 96 of the General Statutes, the "Employment Security Law".

Executive Order 113 recites that Section 6.16 of S.L. 2011-145 "codified" Executive Order 93, which was a similar executive order in 2011 that attempted to extend unemployment benefits without legislative action. EO 113 notes that both Executive Order 93 and Section 6.16 of S.L. 2011-145 expired 12/31/2011. Rather than concluding as does EO 113 that Section 6.16 somehow recognized or validated EO 93, it is my opinion that in fact the enactment of Section 6.16 indicates that the General Assembly did NOT recognize that EO 93 has independent validity. Section 6.16 does not mention EO 93.

In our State constitutional scheme "laws" are made only by the General Assembly. Article II, Section 22 provides that public bills, upon executive approval or override, become law. Numerous other provisions of the State Constitution provide that the General Assembly enacts laws, and Article II Section 1 provides that "The legislative power of the State shall be vested in the General Assembly, while Article I, Section 6 provides that the legislative and executive powers are "...separate and distinct..." Furthering the conclusion that Congress intended for "State law" to be made by the legislature of each state is Section 207(c) of the Federal-State Unemployment Compensation Act of 1970, which provided a special exception for States whose legislatures did not meet in regular session during 1971. Congress in the amended 1970 legislation has clearly provided that the decision in each state is a legislative power, not an executive one. The General Assembly makes laws, not the executive branch.

The legal underpinning of the executive order is quoted and analyzed as follows, with my comments underlined and italicized:

1. Whereas, Article III, Section 1 of the State Constitution invests the executive power of the State in the Governor; *While the executive power of the State is vested in the Governor, by federal law and our State Constitution only legislative power is involved.*
2. Whereas, North Carolina General Statute §143-4 provides that the Governor, in accordance with Article III of the Constitution of North Carolina, is the Chief Executive Officer of the State and is responsible for formulating and administering the policies of the executive branch of the State government; *While the Governor is responsible for the policies of the executive branch, this has no relevance.*
3. Whereas, the Governor is the sole official liaison between the government of this State and the government of the United States; *I know of no legal basis for this conclusion, and even if it is so it has no relevance.*
4. Whereas, the Governor is the sole signatory for the State on agreements and contracts with the United States Department of Labor; *Whether true or not this has no relevance.*
5. Whereas, the North Carolina Department of Commerce Division of Employment Security ... is an agency of the executive branch of North Carolina state government and subject to the policies formulated and administered by the Governor, and is authorized by N.C. Gen. Stat. Chapter 96 to administer the extended benefits program in the State of North Carolina; *It is true that it is an agency of the executive branch and that she is given the power under N.C. Gen. Stat. Chapter 96 to administer the extended benefits program, but the issue is not an executive power of administration but a legislative power as to what the benefits are.*
6. Whereas, based upon the aforementioned provisions of the North Carolina Constitution and the North Carolina General Statutes, I hereby choose to exercise my authority because the extended benefits addressed by this Executive Order are federal funds that are being made available to the State of North Carolina by the United States Department of Labor without the need for any appropriation of state funds by the North Carolina General Assembly. *This is conclusory and in fact is not based on actual powers of the Governor under State and federal law.*

While I recognize that the U.S. Department of Labor in 2011 recognized the validity of EO 93 and began the benefits extension prior to approval of the General Assembly, I am of the opinion that such actions were not authorized by either federal law or the laws of our State.