2011-2012
REVENUE LAWS STUDY COMMITTEE

REPORT TO THE 2013-2014
GENERAL ASSEMBLY OF NORTH CAROLINA
2013 SESSION

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REVENUE LAWS STUDY COMMITTEE
State Legislative Building
Raleigh, North Carolina 27601

Senator Bob Rucho, Co-Chair *Representative Julia C. Howard, Co-Chair*

January 8, 2013

TO THE MEMBERS OF THE 2013 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 Howard, 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 twenty members, ten appointed by the President Pro Tempore of the Senate and ten 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 Representative Julia Howard.

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.

[1] The Speaker of the House of Representatives appointed a ninth legislative member, a non-voting advisory member in 2007, and again in 2009. The General Assembly changed the membership from 16 members to 20 members in S.L. 2009-574, Section 51.1.

[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 2012 General Assembly enacted the Revenue Laws Study Committee's five legislative proposals in whole or in part. Appendix B lists the Committee's recommendations to the 2012 General Assembly and the action it took on them. A document entitled "**2012 Finance Law Changes**" summarizes all of the tax legislation enacted in 2012. It is available in the Legislative Library located in the Legislative Office Building. It may also be viewed on the Legislative Library's website[1] and the Revenue Laws Study Committee's website.[2]

The Revenue Laws Study Committee met four times after the adjournment of the Second Regular Session of the 2011-2012 biennium of the North Carolina General Assembly on July 3, 2012. 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 limited number of issues this biennium, and it recommended two 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.

UNEMPLOYMENT FUND SOLVENCY & PROGRAM CHANGES

The Revenue Laws Study Committee discussed the State's unemployment insurance program (UI) during two meetings held November 8, 2012, and December 5, 2012. At the first meeting, the Committee considered policy options to address the State's approximate $2.5 billion debt owed to the federal government for loans used to

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

pay past UI benefits. The State exhausted the State's UI reserve fund held by the US Treasury and began borrowing to pay UI benefits in February, 2009. The Committee heard testimony explaining recent administrative changes to enhance program integrity and strengthen re-employment efforts.

Under existing law, the debt will be repaid through increased payments by employers under the federal unemployment insurance tax. The mechanism that increases employers' payments is a reduction in tax credit allowed to offset federal UI tax. In 2011, employers paid additional federal UI tax (0.3% credit reduction). The credit against federal UI tax will decrease by 0.3% each year until the debt is repaid. On December 5th, the Committee considered Legislative Proposal #1. The Proposal increases the solvency of the State's unemployment insurance program by changing employers' contributions and claimants' benefits and by limiting the focus of the program on benefits for loss of work.

Legislative Proposal #1 increases the minimum employer contributions from 0% of taxable payroll to 0.06%. The maximum employer contribution is increased from 5.7% to 5.76% of taxable payroll. In addition to the increased State UI taxes, employers are paying increased federal UI taxes through the credit reduction mechanism that applies the additional federal UI tax payments to the State's UI account.

Legislative Proposal #1 changes the maximum duration of benefits from 26 weeks[3] to 20 weeks.[4] The maximum duration of benefits is reduced by 1 week for every 0.5% decline in the total unemployment rate for the State. The reduction of the

[3] North Carolina is a variable duration state. Under current law, the duration of regular benefits may be as few as 13 weeks to as many as 26 weeks.

[4] The maximum duration range would be 13 to 20 weeks, based on an unemployment rate greater than 9%; the minimum duration range would be 5 to 12 weeks, based on an unemployment rate equal to or less than 5%.

maximum duration would start when the unemployment rate falls below 9% triggering a 1 week reduction of the maximum duration to 19 weeks.

Legislative Proposal #1 changes the method for calculating a claimant's weekly benefit amount. Under current law, the weekly benefit amount is calculated based upon an individual's high quarter wages in the individual's base period of employment. The weekly benefit amount cannot exceed the maximum weekly benefit amount, which is calculated annually. The maximum weekly benefit amount is equal to 66.7% of the average weekly wage in the State. For 2013, the maximum weekly benefit amount is $535. Legislative Proposal #1 calculates a claimant's weekly benefit amount based upon the average of the last two quarters of the individual's base period. It sets the maximum weekly benefit amount at $350. The *American Taxpayer Relief Act of 2012,* signed into law on January 2, 2013, extended the federally funded emergency unemployment compensation benefits through the year 2013. Under that legislation, states may not participate in the federal extension of benefits if they change the manner used to calculate an individual's weekly benefit amount in a way that would result in an average weekly benefit amount less than it would have been in June 2010. The Revenue Laws Study Committee did not have an opportunity to analyze the impact of this recent federal law change on the proposal. It adopted an amendment to the Proposal at its last meeting acknowledging that the General Assembly may wish to consider changes to the Proposal after it has an opportunity to review the federal legislation.

Legislative Proposal #1 also streamlines the UI program by making the following programmatic changes: eliminating substantial fault; eliminating many of the good cause provisions; allowing each claim for benefits to stand alone; requiring claimants to be able, available, and actively seeking work; and redefining suitable work based on the

duration of unemployment. These programmatic changes continue the current administrative efforts to increase program integrity and focus on re-employment.

The benefit changes would become effective July 1, 2013. The new tax rates for employers would become effective January 1, 2014. The remaining change would become effective when the bill becomes law.

REVENUE LAWS TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES

The Revenue Laws Study Committee recommends Legislative Proposal #2, Revenue Laws Technical, Administrative, and Clarifying Changes. This proposal makes several technical and clarifying changes to the revenue laws and related statutes. The majority of the changes were recommendations of the Department of Revenue.

At the October 3, 2012 meeting, the Committee heard a presentation regarding several changes to the administration of tobacco taxes. These changes are intended to provide greater conformity in the administration of the different excise taxes, and to provide more guidance to the Department and greater clarity to taxpayers. After incorporating changes requested by stakeholders, these clarifying and administrative changes are also included in Legislative Proposal #2.

LEASEHOLD INTERESTS IN EXEMPT REAL PROPERTY

During the October 3 meeting, the Revenue Laws Study Committee heard a staff presentation on the taxation and valuation of leasehold interests in exempt real property. Section 2 of S.L. 2012-189 authorized the Committee to study leasehold interests in exempt real property and report to the 2013 Regular Session of the General Assembly.

North Carolina imposes a property tax on a leasehold interest in real property where the real property is exempt from property tax. The property tax on a leasehold interest in exempt real property applies when a unit of government leases property to a private business and when the payments under the lease are below the value of the interest in the real estate. County assessors value these leasehold interests as the difference between the fair market value of the leasehold interest and the rent paid under the lease. For example, if the private tenant is paying market rate for the exempt real property owned by a local government, then the leasehold interest has no value because similar leases can be obtained at the same price. If the tenant is paying a bargain rate under the lease, the leasehold interest has value because a similar lease would cost more.

The Local Government Division of the NC Department of Revenue provided testimony to the Committee on the method of valuation of leasehold interests in exempt real property. The Department of Revenue conducted a survey of counties and reported the data to the Committee. The Department of Revenue plans to include a presentation on the proper methodology for the tax in its educational programs for county tax assessors. The Committee also heard public comment from a taxpayer paying the tax.

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Revenue Laws Study Committee makes the following two recommendations to the 2013 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. Unemployment Fund Solvency and Program Changes
2. Revenue Laws Technical, Clarifying, and Administrative Changes

LEGISLATIVE PROPOSAL #1

UNEMPLOYMENT FUND SOLVENCY & PROGRAM CHANGES

LEGISLATIVE PROPOSAL #1

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2013 REGULAR SESSION OF THE 2013 GENERAL ASSEMBLY

AN ACT TO ADDRESS THE UNEMPLOYMENT INSURANCE DEBT AND TO FOCUS NORTH CAROLINA'S UNEMPLOYMENT INSURANCE PROGRAM ON PUTTING CLAIMANTS BACK TO WORK.

SHORT TITLE: UI Fund Solvency & Program Changes.

PRIMARY SPONSORS: Rep. Julia Howard and Sen. Bob Rucho

BRIEF OVERVIEW: This proposal would make the following changes to the State unemployment insurance program designed to accelerate the retirement of the $2.5 billion debt owed by the Unemployment Insurance Fund on advances made to it by the federal government for the payment of benefits:

- Effective July 1, 2013, it would reduce the maximum duration of regular benefits from 26 weeks to 20 weeks, reduce the maximum weekly benefit amount from $535 to $350, and change the calculation of a weekly benefit amount from the high quarter wage in the claimant's base period to the average of the last two quarters.
- Effective July 1, 2013, it would make the following programmatic changes: require a waiting week for each new benefit claim; repeal substantial fault; eliminate most good cause provisions for voluntary leaving work; and redefine suitable work as any work after 10 weeks of benefits.
- Effective July 1, 2013, it would require governmental entities and nonprofits that elect to finance benefits through reimbursement to maintain a reserve equal to 1% of its taxable wages.
- Effective July 1, 2013, it would transfer $16.6 million from various funds to the UI Fund to be used to pay principal on the debt.
- Effective January 1, 2014, it would increase the minimum and maximum SUTA tax rates by .06%, and it would move from a schedule of tax rates to a formula.

FISCAL IMPACT: The changes made by the proposal are estimated to accelerate the repayment of the debt by two to three years. Under the current law, it is anticipated the debt would be retired in 2018. Under the proposal, it is anticipated the debt would be retired in 2015. The proposal would require governmental entities to maintain a reserve in their UI account equal to 1% of taxable payroll. This change would require an estimated General Fund expenditure of $50.6 million in FY 2013-14 and $16.9 million in FY 2014-15. It would also impact local government expenditures: $50.8 million in FY 2013-14 and $17 million in FY 2014-15.

EFFECTIVE DATE: The benefit changes would become effective July 1, 2013, and apply to claims established on or after that date. The tax changes would become effective January 1, 2014. The changes applicable to entities that elect to finance benefits through direct reimbursement would become effective July 1, 2013. The remaining changes would become effective when it becomes law.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H **D**

HOUSE DRH60005-RBxz-5* (10/02)

Short Title:	UI Fund Solvency & Program Changes.	(Public)
Sponsors:	Representatives Howard, Warren, Starnes, and Setzer (Primary Sponsors).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO ADDRESS THE UNEMPLOYMENT INSURANCE DEBT AND TO FOCUS NORTH CAROLINA'S UNEMPLOYMENT INSURANCE PROGRAM ON PUTTING CLAIMANTS BACK TO WORK.

The General Assembly of North Carolina enacts:

SECTION 1. Congress enacted the American Taxpayer Relief Act of 2012 and the President signed it into law on January 2, 2013. That legislation made changes to the tax laws and to the unemployment insurance laws. The General Assembly acknowledges that it needs to review and analyze the impact of those changes on North Carolina's tax laws and unemployment insurance laws, and based upon that analysis the General Assembly may consider further changes to the tax laws and unemployment insurance laws of North Carolina.

SECTION 2.(a) G.S. 96-5 reads as rewritten:

"**§ 96-5. Employment Security Administration Fund.**

(a) Special Fund. – ~~There is hereby created in the State treasury a special fund to be known as the~~ The Employment Security Administration Fund is created as a special fund. ~~Fund. All moneys which are deposited or paid into this fund shall be continuously available to the Secretary for expenditure in accordance with the provisions of this Chapter, and shall not lapse at any time or be transferred to any other fund. The Employment Security Administration Fund, except as otherwise provided in this Chapter, shall be subject to the provisions of the State Budget Act (Chapter 143C of the General Statutes) and the Personnel Act (G.S. 126-1 et seq.). All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this State for the purpose described in G.S. 96-20 shall be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of this Chapter.~~ The fund ~~shall consist~~consists of the following:

(1) ~~all moneys~~Moneys appropriated by this ~~State, all moneys~~State.

(2) Moneys received from the United States of America, or any agency thereof, including the Secretary of Labor, and all moneys received from any other source for ~~such purpose,~~ the administration of this Chapter.

(3) ~~and shall also include any moneys~~ Moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to ~~such agency, any amounts~~ the agency.

(4) Moneys received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Employment Security Administration Fund or by reason of damage to equipment or supplies purchased from moneys in ~~such fund, and~~ the fund.

(5) ~~proceeds~~ Proceeds realized from the sale or disposition of any ~~such~~ equipment or supplies which may no longer be necessary for the proper administration of this ~~Chapter: Provided, any~~Chapter. ~~interest~~ Interest collected on contributions and/or penalties collected pursuant to this Chapter shall be paid into the Special Employment Security Administration Fund created by subsection (c) of this section. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury, and shall be maintained in a separate account on the books of the State treasury. ~~The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Employment Security Administration Fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future.~~ All sums recovered on any surety bond for losses sustained by the Employment Security Administration Fund shall be deposited in ~~said~~ the fund.

(a1) Use of Funds. – The moneys in the Employment Security Administration Fund are continuously available to the Secretary for expenditure in accordance with the provisions of this Chapter. All moneys in this fund that are received from the federal government or any agency thereof or that are appropriated by this State for the purpose described in G.S. 96-20 may be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of this Chapter.

The Secretary is authorized to requisition and receive from its account in the unemployment trust fund in the treasury of the United States of America any moneys standing to its credit in the fund that are permitted by federal law to be used for administering this Chapter and to expend the moneys for such purpose, without regard to a determination of necessity by a federal agency.

(b) Replacement of Funds Lost or Improperly Expended. – If any moneys received from the Secretary of Labor under Title III of the Social Security ~~Act, or any unencumbered balances in the Employment Security Administration Fund or any moneys~~

~~granted to this State pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this State or its political subdivisions and matched by such moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act,~~ Act are found by the Secretary of ~~Labor, because of any action or contingency, to have been lost or expended for purposes other than, or in amounts in excess of those found necessary by the Secretary of Labor~~Labor to have been expended for purposes other than ~~for~~ the proper administration of this Chapter, it is the policy of this State that such ~~moneys, not available from the Special Employment Security Administration Fund established by subsection (c) of this section, shall be replaced by moneys appropriated for such purpose from the general funds of this State to the Employment Security Administration Fund for expenditure as provided in subsection (a) of this section. Upon receipt of notice of such a finding by the Secretary of Labor,~~ moneys must be replaced. Upon such a finding by the Secretary of Labor and notification from the Secretary of the amount that needs to be replaced, the Division ~~shall~~ must promptly pay from the Special Employment Security Administration Fund such sum if available in ~~such~~ the fund; if the sum is not available in the fund, it ~~shall~~ must promptly report to the Governor the amount required for such replacement ~~to the Governor~~ and the Governor ~~shall, at the earliest opportunity,~~ shall submit to the legislature a request for the appropriation of such ~~amount.~~amount from the General Fund.

~~(c) There is hereby created in the State treasury a special fund to be known as the Special Employment Security Administration Fund. All interest and penalties, regardless of when the same became payable, collected from employers under the provisions of this Chapter subsequent to June 30, 1947 as well as any appropriations of funds by the General Assembly, shall be paid into this fund. No part of said fund shall be expended or available for expenditure in lieu of federal funds made available to the Secretary for the administration of this Chapter. Said fund shall be used by the Division for the payment of costs and charges of administration which are found by the Secretary of Labor not to be proper and valid charges payable out of any funds in the Employment Security Administration Fund received from any source and shall also be used by the Secretary for: (i) extensions, repairs, enlargements and improvements to buildings, and the enhancement of the work environment in buildings used for Division business; (ii) the acquisition of real estate, buildings and equipment required for the expeditious handling of Division business; and (iii) the temporary stabilization of federal funds cash flow. The Division may use funds either from the Special Employment Security Administration Fund created by this subsection or from federal funds, or from a combination of the two, to offset the costs of compliance with Article 7A of Chapter 163 of the General Statutes of North Carolina or compliance with P.L. 103-31. Refunds of interest allowable under G.S. 96-10, subsection (e) shall be made from this special fund: Provided, such interest was deposited in said fund: Provided further, that in those cases where an employer takes credit for a previous overpayment of interest on contributions due by such employer pursuant to G.S. 96-10, subsection (e), that the amount of such credit taken for such overpayment of interest shall be reimbursed to the Unemployment Insurance Fund from the Special Employment Security Administration Fund. The Special Employment Security Administration Fund, except as otherwise provided in this Chapter, shall be~~

~~subject to the provisions of the State Budget Act (Chapter 143C of the General Statutes) and the Personnel Act (G.S. 126-1 et seq.). All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury, and shall be maintained in a separate account on the books of the State treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Special Employment Security Administration Fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the Special Employment Security Administration Fund shall be deposited in said fund. The moneys in the Special Employment Security Administration Fund shall be continuously available to the Division for expenditure in accordance with the provisions of this section.~~

(c1) Repealed by Session Laws 2004-124, s. 13.7B(b), effective July 20, 2004.

~~(d) The other provisions of this section and G.S. 96-6, to the contrary notwithstanding, the Secretary is authorized to requisition and receive from its account in the unemployment trust fund in the treasury of the United States of America, in the manner permitted by federal law, such moneys standing to its credit in such fund, as are permitted by federal law to be used for expense of administering this Chapter and to expend such moneys for such purpose, without regard to a determination of necessity by a federal agency. The State Treasurer shall be treasurer and custodian of the amounts of money so requisitioned. Such moneys shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the State treasury.~~

(e) Reed Bill Fund Authorization. – Subject to a specific appropriation by the General Assembly of North Carolina to the Department of Commerce, Division of Employment Security out of funds credited to and held in this State's account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States pursuant to and in accordance with section 903 of the Social Security Act, the Division is authorized to utilize such funds for the administration of the Employment Security Law, including personal services, operating and other expenses incurred in the administration of said law, as well as for the purchase or rental, either or both, of offices, lands, buildings or parts of buildings, fixtures, furnishings, equipment, supplies and the construction of buildings or parts of buildings, suitable for use in this State by the Division, and for the payment of expenses incurred for the construction, maintenance, improvements or repair of, or alterations to, such real or personal property. Provided, that any ~~such~~ funds appropriated by the General Assembly shall not exceed the amount in the Unemployment Trust Fund ~~which~~ that may be obligated for expenditure for such purposes; and provided that said funds shall not be obligated for expenditure, as herein provided, after the close of the two-year ~~period~~ period, which begins on the effective date of the appropriation.

~~(f) Employment Security Reserve Fund. – There is created in the State treasury a special trust fund, separate and apart from all other public moneys or funds of this State,~~

~~to be known as the Employment Security Reserve Fund, hereinafter "Reserve Fund". Part of the proceeds from the tax on contributions imposed in G.S. 96-9(b)(3)j shall be credited to the Reserve Fund, as specified in that statute. The moneys in the Reserve Fund may be used by the Secretary for loans to the Unemployment Insurance Fund, as security for loans from the federal Unemployment Insurance Trust Fund, and to pay any interest required on advances under Title XII of the Social Security Act, and shall be continuously available to the Division for expenditure in accordance with the provisions of this section. The State Treasurer shall be ex officio the treasurer and custodian and shall invest said moneys in accordance with existing law as well as rules and regulations promulgated pursuant thereto. Furthermore, the State Treasurer shall disburse the moneys in accordance with the directions of the Secretary and in accordance with such regulations as the Secretary may prescribe.~~

~~Administrative costs for the collection of the tax and interest payable to the Reserve Fund shall be borne by the Special Employment Security Administration Fund.~~

~~The interest earned from investment of the Reserve Fund moneys shall be deposited in a fund hereby established in the State Treasurer's Office, to be known as the "Worker Training Trust Fund". These moneys shall be used to:~~

~~(1) Fund programs, specifically for the benefit of unemployed workers or workers who have received notice of long-term layoff or permanent unemployment, which will enhance the employability of workers, including, but not limited to, adult basic education, adult high school or equivalency programs, occupational skills training programs, assessment, job counseling and placement programs;~~

~~(2) Continue operation of local Division offices throughout the State; or~~

~~(3) Provide refunds to employers.~~

~~The use of funds from the Worker Training Trust Fund, for the purposes set out in the above paragraph, shall be pursuant to appropriations in the Current Operations Appropriations Act. Funds appropriated from the Worker Training Trust Fund that are unexpended and unencumbered at the end of the fiscal year for which they are appropriated shall revert to the State treasury to the credit of the Worker Training Trust Fund in accordance with G.S. 143C-1-2.~~

~~(g) Notwithstanding subsection (f) of this section, the State Treasurer may invest not more than a total of twenty-five million dollars ($25,000,000) of funds in the Employment Security Reserve Fund established under subsection (f) of this section in securities issued by the North Carolina Technological Development Authority, Inc., the proceeds for which are directed to support investment in venture capital funds. The State Treasurer shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on October 1 and March 1 of each fiscal year on investments made pursuant to this subsection.~~"

SECTION 2.(b) Article 1 of Chapter 96 of the General Statutes is amended by adding a new section to read:

"**§ 96-5.1. Special Employment Security Administration Fund.**

(a) Special Fund. – The Special Employment Security Administration Fund is created as a special fund. The fund consists of all interest and penalties, regardless of

when the same became payable, collected from employers under the provisions of this Chapter as well as any appropriations of funds by the General Assembly.

(b) Use of Funds. – The moneys in the Special Employment Security Administration Fund may not be expended or available for expenditure in lieu of federal funds made available to the Division of Employment Security for the administration of this Chapter. The moneys in the fund may be used for one or more of the following purposes:

(1) The payment of costs and charges of administration that are found by the Secretary of Labor to be improper and valid charges payable out of any funds in the Employment Security Administration Fund received from any source.

(2) The temporary stabilization of federal funds cash flow and security for loans from the federal Unemployment Insurance Fund.

(3) Refunds of interest, to the extent the interest was deposited in this fund. In those cases where an employer takes credit for a previous overpayment of interest on contributions, the amount of credit taken for the overpayment of interest must be reimbursed to the Unemployment Insurance Fund from the Special Employment Security Administration Fund."

SECTION 2.(c) G.S. 96-6 reads as rewritten:

"**§ 96-6. Unemployment Insurance Fund.**

(a) Establishment and ~~Control.~~ Use. – The Unemployment Insurance Fund is created as a special fund. ~~There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Insurance Fund, which shall be administered by the Division's Employment Insurance Section~~ The Division of Employment Security in the Department of Commerce shall administer the fund exclusively for the purposes of this Chapter. This fund ~~shall consist of:~~consists of the following sources of revenue:

(1) All contributions collected under this Chapter, together with any interest earned upon any moneys in the ~~fund;~~fund.

(2) Any property or securities acquired through the use of moneys belonging to the ~~fund;~~fund.

(3) All earnings of such property or ~~securities;~~securities.

(4) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the Social Security Act as ~~amended;~~amended.

(5) All moneys credited to this State's account in the Unemployment Trust Fund pursuant to section 903 of Title IX of the Social Security Act, as amended, (U.S.C.A. Title 42, sec. 1103 (a)~~);~~).

(6) All moneys paid to this State pursuant to section 204 of the Federal-State Extended Unemployment Compensation Act of ~~1970;~~1970.

(7) Reimbursement payments in lieu of contributions.

~~All moneys in the fund shall be commingled and undivided.~~

(b) Accounts and Deposit. – The State Treasurer ~~shall be~~is the ex officio ~~the~~ treasurer and custodian of the ~~fund who shall disburse such fund in accordance with the directions of the Secretary and in accordance with such regulations as the Division shall prescribe.~~fund. The Treasurer ~~shall~~ must maintain within the fund three separate accounts:

(1) A clearing account,

(2) An unemployment trust fund account, and

(3) A benefit account.

(b1) Receipt of Funds. – ~~All~~ The Division of Employment Security must immediately forward all moneys payable to the Unemployment Insurance Fund ~~fund, upon receipt thereof by the Division, shall be forwarded immediately to the treasurer~~to the Treasurer ~~who shall immediately deposit them in~~ for deposit into the clearing account. ~~Refunds payable pursuant to G.S. 96-10 may be paid from the clearing account upon warrants issued upon the treasurer as provided in G.S. 143B-426.40G under the requisition of the Division. After clearance thereof, all other~~ The moneys in the clearing account ~~shall~~ must be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, ~~as amended, any provision of law in this State relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding.~~ as amended. The benefit account ~~shall consist~~consists of all moneys requisitioned from this State's account in the unemployment trust fund. Moneys in the clearing and benefit accounts may be deposited ~~by the treasurer, under the direction of the Secretary,~~ in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium ~~shall~~ may be paid ~~out of~~ from the fund. ~~The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemployment insurance fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability~~ Liability on the State Treasurer's official bond ~~shall exist~~ exists in addition to any liability upon any separate ~~bond existent on the effective date of this provision, or which may be given in the future.~~ bond for the faithful performance of the Treasurer's duties under this section. All sums recovered on any surety bond for losses sustained by the unemployment insurance fund ~~shall~~ must be deposited ~~in said fund.~~in the UI Fund.

(c) Requisitioning Money. – ~~Moneys shall be requisitioned from this~~ The Division must requisition from the State's account in the unemployment trust fund only the amounts needed to pay ~~solely for the payment of benefits (including~~ benefits, including the State's portion of any extended ~~benefits) and in~~ benefits, and overpayments of contributions as provided in G.S. 96-19.30. ~~accordance with regulations prescribed by the Secretary.~~ The Division ~~shall, from time to time,~~ may requisition from the unemployment trust fund ~~such amounts, not exceeding the accounts standing to its account therein, as it deems necessary~~ a sufficient amount for the payment of benefits for a reasonable future period. Upon receipt ~~thereof the treasurer shall~~of the requisitioned amount, the State Treasurer must deposit ~~such moneys~~the funds in the benefit account ~~and shall~~to be used

to pay all warrants drawn ~~thereon~~ on it as provided in G.S. 143B-426.40G and requisitioned by the Division for the payment of ~~benefits solely from such benefit account.~~benefits. Expenditures of ~~such moneys~~funds in the benefit account and refunds from the clearing account ~~shall~~ are not ~~be~~ subject to approval of the ~~Budget Bureau~~State Budget Office or any provisions of law requiring specific appropriations or other formal release by State officers of money in their custody. All warrants issued upon the treasurer for the payment of benefits and refunds ~~shall~~ must be issued as provided in G.S. 143B-426.40G as requisitioned by the Secretary, the Assistant Secretary, or a duly authorized agent of the Division for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned ~~shall either~~must either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the Division, ~~shall~~ may be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this State's account in the unemployment trust ~~fund, as provided in subsection (b) of this section.~~fund.

(d) Management of Funds upon Discontinuance of Unemployment Trust Fund. – The provisions of ~~subsections (a), (b), and (c),~~this section, to the extent that they relate to the unemployment trust fund, ~~shall be~~are operative only so long as ~~such~~ the unemployment trust fund ~~continues to exist,~~ exists, and so long as the Secretary of the Treasury of the United States of America continues to maintain for this State a separate book account of all funds deposited ~~therein~~ in it by this State for benefit purposes, together with this State's proportionate share of the earnings of ~~such~~ the unemployment trust ~~fund, from which no~~fund. No other state is permitted to make ~~withdrawals.~~withdrawals from this State's account. If and when ~~such~~ the unemployment trust fund ceases to exist, or ~~such~~ the separate book account is no longer maintained, all moneys, properties, or securities ~~therein~~ belonging to the Unemployment Insurance Fund of this State ~~shall~~ must be transferred to the treasurer of the Unemployment Insurance Fund, who ~~shall~~ must hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the Secretary of the Department of Commerce, in accordance with the provisions of this ~~Chapter: Provided, that such moneys shall be~~ Chapter. The funds may be invested in ~~the following readily marketable classes of securities: Bonds~~bonds or other interest-bearing obligations of the United States of America or ~~such~~ investments ~~as~~ that are ~~now~~ permitted by law for sinking funds of the State of North ~~Carolina; and provided further, that such~~ Carolina. Any investment ~~shall at all times be so~~ made ~~that all the assets of the fund shall always~~ must be readily convertible into cash when needed for the payment of benefits. The treasurer ~~shall~~ may dispose of securities or other properties belonging to the Unemployment Insurance Fund only under the direction of the Secretary of the Department of Commerce.

(e) Benefits. – Benefits ~~shall be deemed to be~~are due and payable ~~under this Chapter only to the extent~~ as provided in this Chapter ~~and to the extent that~~ from moneys ~~are~~ available ~~therefor to the credit of the Unemployment Insurance Fund, and neither the State nor the Division shall be liable for any amount in excess of such sums.~~in the Unemployment Insurance Fund. If the State has received an advance under

~~(f) Any interest required to be paid on advances under~~ Title XII of the Social Security Act for the payment of benefits, then the State must pay any interest required to be paid on the advance ~~shall be paid~~in a timely ~~manner and shall~~manner. The interest may not be paid, directly or indirectly, from amounts in the Unemployment Insurance Fund."

SECTION 2.(d) Article 1 of Chapter 96 of the General Statutes is amended by adding a new section to read:

"**§ 96-6.1. Employment Security Reserve Fund.**

(a) Creation and Purpose. – The Employment Security Reserve Fund is created as a special fund. Interest and other investment income earned by the Reserve Fund must be credited to it. The Reserve Fund consists of the revenues derived from the tax imposed under G.S. 96-19.34. The moneys in the Reserve Fund may only be used for the following purposes:

(1) Interest payments required on advances under Title XII of the Social Security Act.

(2) Principal payments on advances under Title XII of the Social Security Act.

(3) Transfers to the Unemployment Insurance Fund for payment of benefits.

(4) Administrative costs for the collection of the tax.

(5) Refunds of the tax.

(b) Fund Capped. – The balance in the Employment Security Reserve Fund on January 1 may not exceed the greater of fifty million dollars ($50,000,000) or the amount of interest paid the previous September on advances under Title XII of the Social Security Act. Any amount in the Fund that exceeds the cap must be transferred to the Unemployment Insurance Fund."

SECTION 2.(e) This section becomes effective July 1, 2013.

SECTION 3.(a) The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Commerce, shall transfer and allocate to the Unemployment Insurance Fund any unencumbered cash balance as of June 30, 2013, of each of the following special funds within the Department and then close each of these special funds:

(1) Worker Training Trust Fund (Special Fund Code 64654-6400).

(2) Training and Employment Account (Special Fund Code 64655-6601).

SECTION 3.(b) There is appropriated from the Special Employment Security Administration Fund to the Unemployment Insurance Fund the sum of ten million dollars ($10,000,000) for the 2013-2014 fiscal year to be used to make principal payments on advances made by the federal government under Title XII of the Social Security Act to the Unemployment Insurance Fund to pay unemployment compensation benefits.

SECTION 3.(c) To minimize any negative impact on customers, the Division of Workforce Solutions of the Department of Commerce must take into consideration all of the following factors when determining the appropriate number and location of local offices:

(1) Location of the population served.

(2) Staff availability.

(3) Proximity of local offices to each other.
(4) Use of automation products to provide services.
(5) Services and procedural efficiencies.
(6) Any other factors the Division considers necessary in determining the appropriate number and location of local offices.

SECTION 3.(d) This section becomes effective July 1, 2013.

SECTION 4.(a) The following statutes are recodified as indicated:

Current Statute	Recodified Statute
G.S. 96-15	G.S. 96-19.80
G.S. 96-15.1	G.S. 96-19.82
G.S. 96-15.2	G.S. 96-19.83
G.S. 96-16	G.S. 96-19.81
G.S. 96-17	G.S. 96-19.84
G.S. 96-18	G.S. 96-19.90
G.S. 96-19	G.S. 96-19.92

SECTION 4.(b) For the 2013 taxable year, taxpaying employers must report and remit contributions and the 20% tax imposed on contributions in the same manner and to the same extent as provided under Article 2 of Chapter 96 of the General Statutes as it existed on January 1, 2013.

SECTION 4.(c) Except as provided in subsections (a) and (b) of this section, the remainder of Article 2 of Chapter 96 is repealed.

SECTION 4.(d) This section becomes effective when it becomes law.

SECTION 5.(a) Chapter 96 of the General Statutes is amended by adding a new Article to read:

"Article 2A.

"Unemployment Insurance Division.

"Part 1. Title and Definitions.

"**§ 96-19.1. Title.**

This Article may be cited as "The Reemployment Assistance Act of 2013."

"**§ 96-19.2. Definitions.**

The following definitions apply in this Chapter:

(1) Agricultural labor. – Defined in section 3306 of the Code.
(2) Alternative base period. – The last four completed calendar quarters immediately preceding the first day of an individual's benefit year.
(3) American aircraft. – Defined in section 3306 of the Code.
(4) American employer. – Defined in section 3306 of the Code.
(5) American vessel. – Defined in section 3306 of the Code.
(6) Average weekly insured wage. – The weekly rate obtained by dividing the total wages reported by all insured employers by the monthly average in insured employment during the immediately preceding calendar year and further dividing the quotient obtained by 52.
(7) Base period. – The first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

(8) Benefit. – Compensation payable to an individual with respect to the individual's unemployment.

(9) Benefit year. – The fifty-two week period beginning with the first day of a week with respect to which an individual first registers for work and files a valid claim for benefits. If the individual is payroll attached, the benefit year begins on the Sunday preceding the payroll week ending date. If the individual is not payroll attached, the benefit year begins on the Sunday of the calendar week with respect to which the claimant registered for work and filed a valid claim for benefits.

(10) Calendar quarter. – The period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(11) Claimant. – An individual who makes a claim for unemployment benefits.

(12) Code. – Defined in G.S. 105-228.90.

(13) Computation date. – August 1 of each year.

(14) Contributions. – Payments made by a person to the UI Fund.

(15) Crew leader. – An individual who meets all of the following conditions:

a. Furnishes individuals to perform agricultural labor for any other person.

b. Pays the individuals for the agricultural labor performed by them.

c. Has not entered into a written agreement with another person under which the individual is designated as an employee of the other person.

(16) Department. – The North Carolina Department of Commerce.

(17) Division. – The Department's Division of Employment Security.

(18) Electronic transfer. – A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

(19) Employee. – Defined in section 3306 of the Code. The term does not include an independent contractor.

(20) Employer. – Defined in G.S. 96-19.4.

(21) Employment. – Defined in G.S. 96-19.3.

(22) Employment security law. – Any law enacted by this State or any other state or territory or by the federal government providing for the payment of unemployment insurance benefits.

(23) Farm. – Stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, orchards, or other similar structure used primarily for the raising of agricultural or horticultural commodities.

(24) Farm operator. – The person responsible for the management decisions in operating an agricultural operation.

(25) Federal Unemployment Tax Act. – Chapter 23 of the Code.

(26) Full-time student. – Defined in section 3306 of the Code.

(27) Immediate family. – An individual's spouse, child, grandchild, parent, and grandparent, whether the relationship is a biological, step-, half-, or in-law relationship.

(28) Indian tribe. – A tribe to which subsection (d) of section 3309 of the Code applies.

(29) Localized in this State. – Service that meets one of the following conditions:

a. Is performed entirely within the State.

b. Is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State. For example, the individual's service without the State is temporary or transitory in nature or consists of isolated transactions.

(30) Nonprofit organization. – A religious, charitable, educational, or other organization that is exempt from federal income tax and described in section 501(c)(3) of the Code.

(31) Permanent employment. – Employment of indefinite duration or duration of more than 30 consecutive calendar days, regardless of whether work is performed on all those days.

(32) Person. – An individual, a firm, a partnership, an association, a corporation, whether foreign or domestic, a limited liability company, or any other organization or group acting as a unit.

(33) Qualifying wages. – Wages earned with an employer subject to the provisions of this Chapter or other state employment security law or in federal service as defined in 5 U.S.C. Chapter 85.

(34) Rail employer. – Defined in section 3322 of the Code.

(35) Reemployment services. – Job search assistance and job placement services, such as counseling, testing, assessment, and providing occupational and labor market information, job search workshops, job clubs, referrals to employers, and other similar services.

(36) Secretary. – The Secretary of the Department of Commerce or the Assistant Secretary in charge of the Division of Employment Security.

(37) State. – Defined in section 3306 of the Code.

(38) Taxable wage base. – Defined in G.S. 96-19.31.

(39) UI Fund. – The Unemployment Insurance Fund established by this Chapter.

(40) Unemployed. – Defined in G.S. 96-19.6.

(41) Wages. – Defined in G.S. 96-19.5.

"**§ 96-19.3. Employment.**

(a) General Definition. – The term "employment" means service performed for wage or under any contract of hire, written or oral, express or implied, in which the relationship of the individual performing the service and the person for whom the service is rendered is, as to such service, the legal relationship of employer and employee.

(b) Service Performed in the State. – The term "employment services" includes an individual's entire service, whether performed within or without this State, if any of the following applies:

(1) The service is localized in this State.

(2) The service is not localized in any state but some of the service is performed in this State, and one or more of the following applies:

a. The base of operations is in this State.

b. If there is no base of operations, then the place from which such service is directed or controlled is in this State.

c. The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(3) The service, wherever performed, is within the United States or Canada and both of the following applies:

a. The service is not covered under the unemployment compensation law of any other state or Canada.

b. The place from which the service is directed or controlled is in this State.

(4) The service is performed outside the Unites States or Canada by a citizen of the United States in the employ of an American employer and at least one of the following applies:

a. The employer's principal place of business in the United States is located in this State.

b. The employer has no place of business in the United States, but the employer is an individual who is a resident of this State, or a corporation that is organized under the laws of this State, or a partnership or a trust where the number of partners or trustees who are residents of this State is greater than the number who are residents of any other state.

c. The employer has elected coverage in this State, as provided in G.S. 96-19.21.

d. The employer has not elected coverage in any state and the employee has filed a claim for benefits under the law of this State based on the service provided to the employer.

(c) Non-Applicability. – The term "employment" does not include any of the following:

(1) Employment as defined in the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(2) The following services performed for a State or local governmental employing unit or for an employing unit of an Indian tribe:

a. An elected official.

b. A member of a legislative body or a member of the judiciary.

c. A member of the North Carolina National Guard.

d. An employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency. These services include temporary emergency services compensated solely by a fixed payment for each emergency call answered whether or not provided for by prior agreement and training in preparation for such temporary emergency service whether or not compensated.

e. An employee in a policy-making or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week.

(3) Service with respect to which unemployment insurance is payable under an employment security system established by an act of Congress. The Division may enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective 10 days after publication thereof in the manner provided in G.S. 96-4(b) for general rules, to provide potential rights to benefits under this Chapter, acquired rights to unemployment insurance under act of Congress, or who have, after acquiring potential rights to unemployment insurance, under such act of Congress, acquired rights to benefits under this Chapter.

(4) Services performed by an individual in the employ of a son, daughter, or spouse.

(5) Services performed by a child under the age of 21 in the employ of his father or mother or of a partnership consisting only of parents of the child.

(6) Service performed by an individual during any calendar quarter for an employer as an insurance agent or as an insurance solicitor, or as a securities salesman if all such service performed during the calendar quarter by the individual for the employing unit or employer is performed for remuneration solely by way of commission.

(7) Service performed by an individual for an employing unit as a real estate agent or a real estate salesman as defined in G.S. 93A-2, provided, that the real estate agent or salesman is compensated solely by way of commission and is authorized to exercise independent judgment and control over the performance of his work.

(8) Services performed in employment as a newsboy or newsgirl selling or distributing newspapers or magazines on the street or from house to house.

(9) Service covered by an election duly approved by the agency charged with the administration of any other state or federal employment security law in accordance with an arrangement pursuant to subsection (l) of G.S. 96-4 during the effective period of such election.

(10) Casual labor not in the course of the employing unit's trade or business.

(11) Service in any calendar quarter in the employ of any organization exempt from income tax under the provisions of section 501(a) of the Internal Revenue Code, other than an organization described in section

401(a) of the Internal Revenue Code, or under section 521 of the Internal Revenue Code, if the remuneration for the service is less than fifty dollars ($50.00).

(12) Service in the employ of a school, college, or university, if the service is performed by one of the following:

a. A student who is enrolled and is regularly attending classes at such school, college, or university.

b. The spouse of a student described in this subdivision, if the spouse is advised, at the time the spouse commences to perform such service, both of the following:

1. The employment of the spouse to perform service is provided under a program to provide financial assistance to such student by such school, college, or university.

2. The employment will not be covered by any program of unemployment insurance.

(13) Service performed by an individual for an employer as an integral part of an academic program that combines academic instruction with work experience. This subdivision only applies to service performed by an individual who is enrolled as a student in a full-time program at a nonprofit or public educational institution that maintains a regular faculty and curriculum and has a regularly organized body of students in attendance at the place where its educational activities occur and who is providing the service as part of an academic program taken for credit at the institution. The institution must certify to the employer that the service is an integral part of an academic program that the individual is taking for credit at the institution. This subdivision does not apply to service performed in a program established for or on behalf of an employer or group of employers.

(14) Services performed in the employ of a church or convention or association of churches, or an organization that is operated primarily for religious purposes and that is operated, supervised, controlled or principally supported by a church or convention or association of churches.

(15) Services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.

(16) Services performed in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work.

(17) Services performed as a part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency, an agency of a state or political subdivision thereof, or an Indian tribe, by an individual receiving the work relief or work training, unless a federal law, rule, or regulation mandates unemployment insurance coverage to individuals in a particular work-relief or work-training program.

(18) Any of the following services performed by an inmate:

a. Services performed for a hospital in a State prison or other State correctional institution.

b. Services performed as part of a work-release program.

c. Services performed at the custodial or penal institution.

(19) Services performed for a hospital by a patient in that hospital.

(20) Services performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under a remuneration arrangement described in this subdivision. In order to preserve the State's right to collect State unemployment taxes for which a credit against federal unemployment taxes may be taken for contributions paid into the State unemployment insurance fund, this subdivision does not apply, with respect to any individual, to service during any period for which an assessment for federal unemployment taxes is made by the Internal Revenue Service pursuant to the Federal Unemployment Tax Act which assessment becomes a final determination. Services performed by an individual for remuneration based upon the amount of the boat's catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch rather than cash. This subdivision only applies if the operating crew of a boat in the fishing operation is normally made up of fewer than 10 individuals. In the case of a fishing operation involving more than one boat, the remuneration may be based upon the catch of all the boats.

(21) Services performed by a full-time student in the employ of an organized camp for less than 13 calendar weeks in the calendar year if the camp meets one of the following conditions:

a. It did not operate for more than seven months in the calendar year and did not operate for more than seven months in the preceding calendar year.

b. It had average gross receipts for any six months in the preceding calendar year which were not more than thirty-three and one-third percent (33 1/3%) of its average gross receipts for the other six months in the preceding calendar year.

(22) Services performed as a resident by an individual who has completed a four-year course in medical school chartered or approved pursuant to State law, provided that the service is performed for and while in the employment of a nonprofit organization created to provide medical

services to a targeted socio-economically disadvantaged group within this State.

(23) Services performed by an individual who is an alien having residence in a foreign country that the individual has no intention of abandoning, who possesses a valid J-1 Visa, and who is present in the State for a period of six months or less pursuant to the provisions of 8 U.S.C. § 1101(a)(15)(F)(J)(M)(Q).

(d) American Vessel or Aircraft. – The term employment includes a service of whatever nature performed by an individual for an employing unit on or in connection with an American vessel under a contract of service that is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the individual is employed on and in connection with the vessel when outside the United States. The service must be performed on or in connection with the operations of an American vessel operating on navigable waters within or within and without the United States and the operations must be ordinarily and regularly supervised, managed, directed, and controlled from an operating office maintained by the employing unit in this State.

The term does not include service performed by an individual on or in connection with a vessel or aircraft that is not an American vessel or an American aircraft if the individual is performing services on and in connection with the vessel or aircraft when outside the United States. The term does not include service performed by an individual as an officer or member of the crew of a vessel while the vessel is engaged in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed by the individual as an ordinary incident to any such activity, unless both of the following conditions are met:

(1) The service is performed in connection with the catching or taking of salmon or halibut for commercial purposes.

(2) The service is performed on or in connection with a vessel of more than 10 net tons, as determined in the manner provided for determining the registered tonnage of merchant vessels under the laws of the United States.

(e) American Aircraft. – The term employment includes any service of whatever nature performed by an individual for an employing unit on or in connection with an American aircraft under a contract of service that is entered into within the United States or during the performance of which and while the employee is employed on the aircraft it touches at a port in the United States, if such individual is employed on and in connection with such aircraft when outside the United States. The service must be performed on or in connection with the operations of an American aircraft and such operations must be ordinarily and regularly supervised, managed, directed, and controlled from an operating office maintained by the employing unit in this State.

"**§ 96-19.4. Employer.**

(a) Generally. – The term "employer" means an employing unit who paid wages to an individual to perform employment service and who meets one of the following conditions:

(1) Employed one or more individuals within the current or preceding calendar year for some portion of a day in each of 20 different calendar weeks within the calendar year.

(2) Paid wages of one thousand five hundred dollars ($1,500) or more in any calendar quarter in either the current or preceding calendar year.

(b) Agricultural Labor. – With agricultural labor, the employer may be the crew leader or the farm operator. A crew leader may be the employer if the crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act or if substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment provided by the crew leader. A farm operator is the employer of a worker hired by the farm operator, regardless of whether the worker is assigned to work with a crew or under the leadership of the crew leader. The farm operator is deemed to be the employer of all the workers when the crew leader does not qualify as an employer.

For agricultural labor, the term "employer" means an employing unit who paid wages to an individual to perform agricultural labor and who meets one of the following conditions:

(1) Employed 10 or more individuals in agricultural labor within the current or preceding calendar year for some portion of a day in each of 20 different calendar weeks within the calendar year.

(2) Paid wages of twenty thousand dollars ($20,000) or more in any calendar quarter in either the current or preceding calendar year.

(c) Domestic Service. – The term "employer" means an employing unit who paid wages to an individual of one thousand dollars ($1,000) or more in any calendar quarter in the current or preceding calendar year for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

(d) Other Employers. – The term "employer" means any one or more of the following employing units:

(1) American vessel. – An employing unit that meets at least one other description of an employer in this section and that maintains an operating office within this State from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed, and controlled.

(2) Election. – A person that has elected to become fully subject to this Chapter under G.S. 96-19.21.

(3) Acquisition. – An employing unit who has acquired part or all of another employing unit who at the time of acquisition was an employer described in this section.

(4) Governmental. – Any employing unit of the State or a local governmental unit. A governmental entity is not an employer by reason of hiring an intern.

(5) Nonprofit organization. – An employing unit of a nonprofit organization that employed four or more individuals within the current or preceding calendar year for some portion of a day in each of 20 different calendar weeks within such calendar year.

(6) Indian tribe. – An employing unit of an Indian tribe, a subdivision or subsidiary of an Indian tribe, or a business enterprise wholly owned by an Indian tribe.

(7) Federal requirement. – An employing unit liable for federal unemployment tax under the Federal Unemployment Tax Act or an employing unit required to be an employer under this Chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act.

(e) Administration. – An individual performing services within this State for an employer who maintains two or more separate establishments within this State is deemed to be employed by a single employer. An individual employed to perform or to assist in performing the work of an agent or employee of an employer is deemed to be employed by that employer unless both of the following conditions are met:

(1) The agent or employee is an employer subject to the tax imposed by the Federal Unemployment Tax Act, whether the individual was hired or paid directly by the employing unit or by the agent or employee of the employing unit.

(2) The employing unit had actual or constructive knowledge of the work of the individual.

"**§ 96-19.5. Wages.**

(a) General. – The term "wages" means all remuneration paid by an employer to an employee for employment from whatever source. The term includes all of the following:

(1) Salaries, commissions, and bonuses.

(2) Amounts paid under an order of a court, the National Labor Relations Board, or any other lawfully constituted adjudicative agency or by private agreement, consent, or arbitration for loss of pay by reason of discharge.

(3) The cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash must be estimated and determined in accordance with rules adopted by the Division.

(4) The reasonable amount of gratuities that an employee receives directly from a customer and reports to the employer and that the employer considers as salary for the purpose of meeting minimum wage requirements.

(5) Tips received while performing services that constitute employment and are included in a written statement furnished to the employer pursuant to the requirements of the Code.

(6) Any amount paid to an employee or a dependent of an employee on account of sickness or accident disability that does not meet the requirements of subdivision (b)(1) of this section.

(b) Excluded. – The term "wages" does not include any of the following:

(1) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment, on account of retirement, sickness or accident disability, medical and hospitalization expenses in connection with sickness or accident disability, or death.

(2) Payments made to an employee under worker's compensation laws.

(3) Any payment by an employer without deduction from the remuneration of the employee of the tax imposed upon an employee under the Federal Insurance Contributions Act.

(4) Any payment made to, or on behalf of, an employee or the employee's beneficiary from or to a trust that qualifies under the conditions set forth in sections 401(a)(1) and (2) of the Internal Revenue Code.

(5) Any payment made to, or under, an annuity plan which at the time of the payment meets the requirements of sections 401(a)(3), (4), (5) and (6) of the Internal Revenue Code and exempt from tax under section 501(a) of the Internal Revenue Code at the time of the payment, unless the payment is made to an employee of the trust as remuneration for services rendered as an employee and not as beneficiary of the trust.

(6) Any payment made to, or on behalf of, an employee or his beneficiary under a Cafeteria Plan within the meaning of section 125 of the Internal Revenue Code.

(7) The amount of any payment, including any amount paid into a fund to provide for such payment, made to, or on behalf of, an employee under a plan or system established by an employer or others which makes provision for employees generally, or for a class or group of employees, for the purpose of supplementing unemployment benefits, provided that the plan has been approved by the Division in accordance with the Code.

"**§ 96-19.6. Unemployed.**

(a) Initial Unemployment. – An individual is unemployed for the purpose of establishing a benefit year if one of the following conditions is met:

(1) Payroll attachment. – The individual has payroll attachment but because of lack of work during the payroll week for which the individual is requesting the establishment of a benefit year, the individual worked

less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which the individual has payroll attachment as a regular employee.

(2) No payroll attachment. – The individual has no payroll attachment on the date the individual files a claim for unemployment benefits.

(b) Unemployed. – For benefit weeks within an established benefit year, a claimant is unemployed as provided in this subsection:

(1) Totally unemployed. – The claimant's earnings for the week, including payments in subsection (c) of this section, would not reduce the claimant's weekly benefit amount as calculated in G.S. 96-19.60.

(2) Partially unemployed. – The claimant is payroll attached and both of the following apply:

a. The claimant worked less than three customary scheduled full-time days in the establishment, plant, or industry in which the claimant is employed because of lack of work during the payroll week for which the claimant is requesting benefits.

b. The claimant's earnings for the payroll week for which the claimant is requesting benefits, including payments in subsection (c) of this section, would qualify the claimant for a reduced weekly benefit amount as calculated in G.S. 96-19.60.

(3) Part-totally unemployed. – The claimant has no payroll attachment during all or part of the week and the claimant's earnings for odd jobs or subsidiary work would qualify the claimant for a reduced weekly benefit amount as calculated in G.S. 96-19.60.

(c) Separation Payments. – An individual is not unemployed if, with respect to the entire calendar week, the individual receives or will receive as a result of the individual's separation from work remuneration in one or more of the forms listed in this subsection. If the remuneration is given in a lump sum, the amount must be allocated on a weekly basis as if it had been earned by the individual during a week of employment. An individual may be unemployed, as provided in subsection (b) of this section, if the individual is receiving payment applicable to less than the entire week.

(1) Wages in lieu of notice.

(2) Accrued vacation pay.

(3) Terminal leave pay.

(4) Severance pay.

(5) Separation pay.

(6) Dismissal payments or wages by whatever name.

"Part 2. Coverage.

"**§ 96-19.20. Employers and employees.**

(a) Coverage. – An employing unit that is an employer under this Article and employs individuals in an employment service covered under this Article must finance the unemployment benefits paid through the UI Fund and its employees accrue rights to unemployment benefits as provided in this Article.

(b) Acquisition. – An employer who, by operation of law, purchase, or otherwise becomes successor to an employer liable for contributions becomes liable for contributions on the day of the succession. This provision does not affect the successor's liability as otherwise prescribed by law for unpaid contributions due from the predecessor.

(c) Exemption. – This Chapter does not apply to service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act.

"**§ 96-19.21. Voluntary election.**

(a) Employer. – An employer not otherwise liable for contributions under this Chapter may file with the Division its written election to become an employer subject to this Chapter. Upon the written approval of the Division, the employer becomes subject to this Chapter to the same extent as all other employers as of the date stated in the approval. The election must be valid for a period of not less than two years.

(b) Employment. – An employer for services that do not constitute employment under this Chapter may file with the Division its written election that all services performed by individuals in its employ, in one or more distinct establishments or places of business, constitute employment for all the purposes of this Chapter. Upon the written approval of the Division, the services become subject to this Chapter to the same extent as all other services as of the date stated in the approval. The election must be valid for a period of not less than two years.

(c) Employees. – An employer who employs the services of an individual who resides within this State but performs the services entirely without the State may file with the Division its written election to have the individual's service constitute employment for all purposes of this Chapter if contributions are not required and are not paid with respect to the services under an employment security law of any other state or of the federal government. Upon the written approval of the Division, the services become subject to this Chapter to the same extent as all other services as of the date stated in the approval. The election must be valid for a period of not less than two years.

(d) Termination of Election. – The Division may, on its own motion, terminate coverage of an employer who has become subject to this Chapter solely by electing coverage under this section. The Division must give the employer 30 days written notice of its decision. The notice must be mailed to the employer's last known address. An employer who elects coverage under this section may, subsequent to the two-year minimum election period, file a written notice to the Division to have coverage under this Chapter cease. The notice must be given prior to the first day of March following the first day of January of the calendar year for which the employing unit wishes to cease coverage under this section.

"**§ 96-19.22. Termination of coverage.**

(a) Nonpayment of Wages. – An employer who has not paid any covered wages for employment in this State during a period of two consecutive calendar years ceases to be an employer liable for contributions under this Chapter.

(b) No Employment of Individuals. – An employer who has not had individuals in employment and who has made an application for exemption from filing contribution and

wage reports and has been so exempted may be terminated from liability upon written application made within 120 days after notification by the Division of the reactivation of the employer's account. The Division may terminate coverage if it finds that the employer was not liable for contributions during the preceding calendar year. Termination of coverage under this subsection may be effective January 1 of any calendar year. In the event these cases are reactivated, a protest of liability is considered an application for termination where the decision with respect to the protest is not final.

(c) Application for Termination. – An employer may file a written application for termination of coverage with the Division. An application for termination must be filed prior to the first day of March following the first day of January of the calendar year for which the employer wishes to cease coverage. The Division may terminate coverage if it finds that the employer was not liable for contributions during the preceding calendar year. Termination of coverage under this subsection is effective as of the first day of January in any calendar year.

(d) Termination by Discovery of Liability. – An employer whose liability covers a period of more than two years when first discovered by the Division may file a written application for termination within 90 days after notification by the Division of the employer's liability. The Division may terminate coverage of the employer effective January 1 and for any subsequent year if the Division finds that the employer was not liable for contributions during the preceding calendar year. In these discovered cases, a protest of liability is considered as an application for termination where the decision with respect to the protest is not final. This subsection does not apply to a case of willful attempt to defeat or evade the payment of contributions due.

"Part 3. Contributions

"**§ 96-19.30. Payment of Contributions.**

(a) Imposition. – A contribution is imposed on the taxable wages of each individual employed by an employer during the calendar year at the rate set in G.S. 96-19.31. Contributions must be credited to the UI Fund. Contributions made by employers must be credited to the employer's account as provided in Part 4 of this Article.

(b) Report and Payment. – Contributions are payable to the Division when a report is due. An employer of domestic service employees may be given permission by the Secretary to file reports once a year on or before the last day of the month following the close of the calendar year in which the wages are paid. All other reports are due on or before the last day of the month following the close of the calendar quarter in which the wages are paid. The Division must remit the contributions to the Fund. An employer may not deduct the contributions due in whole or in part from the remuneration of the individuals employed. If the amount of the contributions shown to be due after all credits is less than five dollars ($5.00), no payment need be made.

(c) Method of Payment. – An employer may elect to pay contributions by electronic funds transfer. When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Division may assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a

minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). The Division may waive this penalty for good cause shown.

The Division may establish policies to allow taxes to be payable under certain conditions by credit card. A condition of payment by credit card is receipt by the Division of the full amount of taxes, penalties, and interest due. The Division shall require an employer who pays by credit card to include an amount equal to any fee charged the Division for the use of the card. A payment of taxes that is made by credit card and is not honored by the card issuer does not relieve the employer of the obligation to pay the taxes.

(d) Form of Report. – An employer of domestic service employee that is granted permission to file an annual report may be given permission to file reports by telephone. An employer who reports by telephone must contact either the Field Tax Auditor who is assigned to the employer's account or the Employment Insurance Section in Raleigh and report the required information to that Auditor or to the Division by the date the report is due.

An employer with 100 or more employees, and every person or organization that reports wages on a total of 100 or more employees as an agent on behalf of one or more subject employers, must file that portion of the "Employer's Quarterly Tax and Wage Report" that contains the name, social security number, and gross wages of each individual in employment on magnetic tapes or diskettes in a format prescribed by the Division. For failure of an employer to comply with this subsection, the Division must add to the amount required to be shown as tax in the reports a penalty of twenty-five dollars ($25.00). For failure of an agent to comply with this subdivision, the Division may deny the agent the right to report wages and file reports for the employer for whom the agent filed an improper report for a period of one year following the calendar quarter in which that agent filed the improper report. The Division may reduce or waive a penalty for good cause shown.

(e) Overpayments. – If an employer has paid contributions, penalties, and interest in excess of the amount due, this amount is considered an overpayment and may be refunded to the employer provided no other debts are owed to the Division by the employer. Overpayments of less than five dollars ($5.00) will be refunded only upon receipt by the Secretary of a written demand for such refund from the employer.

(f) Voluntary Contributions. – An employer may make a voluntary contribution to the fund to be credited to its account. A voluntary contribution will for all intents and purposes be deemed a required contribution. The Division is not bound by any condition stipulated in or made a part of the voluntary contribution by the employer.

(g) Assessment. – If the Division has reason to believe that the collection of any contribution under this Chapter will be jeopardized by delay, the Division may, whether or not the time otherwise prescribed by law for making returns and paying the tax has expired, immediately assess the contributions, together with all interest and penalties. Such contributions, penalties, and interest become immediately due and payable.

"**§ 96-19.31. Rate of contribution to the UI Fund.**

(a) Contribution Rate Calculation. – The Division must determine the contribution rate for each employer based on the employer's reserve ratio on the computation date,

August 1. The Division must notify each employer of the employer's contribution rate for the succeeding calendar year by January 1 of the succeeding calendar year. The contribution rate becomes final unless the employer files an application for review and redetermination prior to May 1 following the effective date of the contribution rate. The Division may redetermine the contribution rate on its own motion within the same time period.

(b) Standard Beginning Rate. – The standard beginning rate of contributions for an employer is one percent (1%) of taxable wages paid by the employer during a calendar year for employment occurring during that year. No employer's contribution rate may be reduced below the standard rate for any calendar year until its account has been chargeable with benefits for at least 12 calendar months ending July 31 immediately preceding the computation date. An employer's account has been chargeable with benefits for at least 12 calendar months if the employer has reported wages paid in four completed calendar quarters. No employer's contribution rate may be reduced below the standard rate for any calendar year unless its liability extends over a period of all or part of two consecutive calendar years and, as of August 1 of the second year, its credit reserve ratio meets the requirements used in computing rates for the following calendar year.

(c) Other Rates. – The contribution rate for employers not covered under subsection (b) of this section is a percentage of taxable wages paid by the employer during a calendar year for employment occurring during that year. The percentage for employers whose reserve ratio is equal to zero is the rate set forth in the table below, divided by 100. The percentage for employers whose reserve ratio is not equal to zero is the applicable rate in the table below minus the employer's effective reserve ratio, divided by 100. The employer's effective reserve ratio is equal to the employer's reserve ratio multiplied by sixty-eight hundredths. The Division must round the rate to the nearest one-hundredth percent. The minimum contribution rate may not be less than six-tenths of one percent (0.06%) and the maximum contribution rate may not exceed five and seventy-sixths hundredths percent (5.76%).

Trust Fund Balance	**Contribution Rate**
Less than or equal to 1% of total insured wages	2.9
Greater than 1% but less than or equal to 1.25% of total insured wages	2.4
Above 1.25% of total insured wages	1.9

(d) Taxable Wages. – An individual's taxable wages are the wages subject to contribution under this section. The Division must determine the taxable wage base applicable for each taxable year. The taxable wage base is the greater of the federally required taxable wage base or the product resulting from multiplying the average yearly insured wage by fifty percent (50%), rounded to the nearest multiple of one hundred dollars ($100.00). The average yearly insured wage is the average weekly insured wage on the computation date multiplied by 52. An employer is not liable for contributions on wages paid to an individual that exceed the taxable wage base.

The following wages are included in determining whether the amount of wages paid to an individual in a single calendar year exceeds the taxable wage base:

(1) Wages paid to an individual in this State by an employer that made contributions in another state upon the wages paid to the individual because the work was performed in the other state.

(2) Wages paid by a successor employer to an individual that meets both of the following conditions:

a. The individual was an employee of the predecessor and was taken over as an employee by the successor as a part of the organization acquired.

b. The predecessor employer has paid contributions on the wages paid to the individual while in the predecessor's employ during the year of acquisition and the account of the predecessor is transferred to the successor.

(e) Total Insured Wages. – For purposes of this section, the term "total insured wages" means all wages earned by employees insured by the State's unemployment insurance program.

"**§ 96-19.32. Nonprofit organizations and governmental entities.**

(a) Applicability. – This section applies to an employing unit that is a nonprofit organization, the State, or a local governmental unit. Benefits paid to employees of the State, local governmental units, and nonprofit organizations may be financed in accordance with the provisions of this section.

(b) Election. – An employer to whom this section applies must finance benefits under the contributions method of payment applicable to taxpaying employers, unless it elects to finance benefits by making reimbursable payments to the Division for the UI Fund. The amount of reimbursable payment the employer must make is equal to the amount of regular benefits and one-half of the extended benefits paid to an individual for weeks of unemployment that begin within a benefit year established during the effective period of the election and that are attributable to service in the employ of the electing employer.

To make an election under this section, an employer must file a written notice of its election with the Division at least 30 days before the January 1 effective date of the election. An election made under this section is valid for a minimum of four years. An election made under this section is binding until the employer files a notice terminating its election. A written notice of termination must be filed with the Division at least 30 days before the January 1 effective date of the termination. The Division must notify an employer of any determination of the effective date of any election it makes and of any termination of the election. These determinations are subject to reconsideration, appeal, and review.

(c) Account. – The Division must establish a separate account for each reimbursing employer. The Division must credit payments made by the employer to the account. The Division must allocate benefits paid by the UI Fund to individuals for weeks of unemployment that begin within a benefit year established during the effective period of the election that are attributable to service in the employ of the employer. No benefits may be noncharged except amounts equal to one hundred percent (100%) of benefits paid through error.

(d) Quarterly Contributions and Wage Reports. – An employer that elects to be a reimbursing employer under this section must submit quarterly contributions and wage reports and advance payments to the Division on or before the last day of the month following the close of the calendar quarter in which the wages are paid. The amount of the advance payment is equal to one percent (1%) of the taxable wages reported. The Division must remit the payments to the UI Fund and credit the payments to the employer's account. An employer may not deduct the contributions due in whole or in part from the remuneration of the individuals employed.

An employer paying by reimbursement that, prior to July 1, paid under the reimbursement method of payment for the preceding calendar year, must continue to file quarterly reports but does not need to make a payment with those reports.

(e) Annual Reconciliation. – An employer that elects to finance benefits under the reimbursement method of payment must maintain an account balance equal to one percent (1%) of its taxable wages. The Division must determine the balance of each employer's account as of August 1 of each year. The Division must furnish the employer with a statement of all charges and credits to the account prior to January 1 of the succeeding year.

If there is a deficit in the account, the Division must bill the employer for an amount necessary to bring its account to one percent (1%) of its taxable wages. Any amount in the account in excess of one percent (1%) of taxable wages must be credited to the employer's account. Amounts due from the employer to bring its account to a one percent (1%) balance will be billed as soon as practical and payment is due within 30 days from the date of mailing of the statement of the amount due.

(f) Accelerated Reconciliation. – The Division may, in its sole discretion, provide a reimbursing employer with informational bills or lists of charges on a basis more frequent than yearly if the Division considers such action to be in the best interest of the Division and the affected employer.

(g) Change in Election. – The Division must close the account of an employing unit that has been paying contributions under this Article and that elects to change to a reimbursement basis under this section and the account may not be used in any future computation of the unit's contribution rate in any manner.

(h) Transition. – This subsection is intended to provide a transitional adjustment period for an employing unit that elected to be a reimbursing employer prior to January 1, 2013, but was not required to secure its election with an account balance equal to one percent (1%) of its taxable wages. This subsection expires January 1, 2016.

(1) Governmental entities. – An employing unit that is a State or local governmental unit may elect to forego the payment under subsection (e) of this section until the reconciliation in 2014 payable in 2015. An employer who makes the election under this subdivision must reimburse the Division in the amount required by subsection (b) of this section and must continue to make quarterly contributions and advance payments under subsection (d) of this section.

(2) Nonprofit organization. – An employing unit that is a nonprofit organization that secured its election by posting a surety bond or a line

of credit does not need to meet the annual reconciliation account balance requirement until the year in which its surety bond or line of credit expires. After July 1, 2013, a nonprofit organization may not submit a surety bond or a line of credit to secure its election under this section.

"**§ 96-19.33. Indian tribes.**

(a) Applicability. – Benefits paid to employees of Indian tribe employing units may be financed in accordance with the provisions of this section.

(b) Election. – An Indian tribe employing unit must pay contributions under the provisions of this Article, unless it elects in accordance with this section to pay the Division for the Trust Fund an amount equal to the amount of benefits paid that is attributable to service in the employ of the unit, to individuals for weeks of unemployment that begin within a benefit year established during the effective period of the election. Extended benefits paid that are attributable to service in the employ of an Indian tribe employing unit and not reimbursed by the federal government must be financed in their entirety by the Indian tribe employing unit.

To make an election under this section, an Indian tribe employing unit must file a written notice of its election with the Division at least 30 days before the January 1 effective date of the election. An election made under this section is valid for a minimum of three years. An election made under this section is binding until the Indian tribe employing unit files a notice terminating its election. A written notice of termination must be filed with the Division at least 30 days before the January 1 effective date of the termination. The Division must notify each Indian tribe employing unit of any determination of the effective date of any election it makes and of any termination of the election. These determinations are subject to reconsideration, appeal, and review.

(c) Account. – The Division must establish a separate account for each reimbursing employer. The Division must credit payments made by the employer to the account. The Division must allocate benefits paid by the Trust Fund to individuals for weeks of unemployment that begin within a benefit year established during the effective period of the election that are attributable to service in the employ of the employer. No benefits may be noncharged except amounts equal to one hundred percent (100%) of benefits paid through error. Extended benefits paid that are attributable to service in the employ of an Indian tribe employing unit and not reimbursed by the federal government must be financed in their entirety by the Indian tribe employing unit.

(d) Quarterly Contributions and Wage Reports. – An Indian tribe employing unit that elects to be a reimbursing employer under this section must submit quarterly contributions and wage reports and advance payments to the Division on or before the last day of the month following the close of the calendar quarter in which the wages are paid. The amount of the advance payment is equal to one percent (1%) of the taxable wages reported. The Division must remit the payments to the Fund and credit the payments to the employer's account. An employer may not deduct the contributions due in whole or in part from the remuneration of the individuals employed.

Any Indian tribe employing unit paying by reimbursement having been, prior to July 1, under the reimbursement method of payment for the preceding calendar year, must continue to file quarterly reports but does not need to make a payment with those reports.

(e) Annual Reconciliation. – A reimbursing employer that elects to finance benefits under the reimbursement method of payment must maintain an account balance equal to one percent (1%) of its taxable wages. The Division must determine the balance of each employer's account as of August 1 of each year. The Division must furnish the employer with a statement of all charges and credits to the account prior to January 1 of the succeeding year.

If there is a deficit in the account, the Division must bill the employer for an amount necessary to bring its account to one percent (1%) of its taxable wages. Any amount in the account in excess of one percent (1%) of taxable wages must be credited to the employer's account. Amounts due from the employer to bring its account to a one percent (1%) balance will be billed as soon as practical and payment is due within 25 days from the date of mailing of the statement of the amount due.

(f) Collection Notice. – Notices of payment and reporting delinquency to Indian tribe employing units must include information that failure to make full payment within the time prescribed causes the unit to become liable for contributions G.S. 96-19.30, causes the unit to lose the option of making payment by reimbursement in lieu of contributions, and may cause the unit to lose coverage under this Chapter for services performed for the unit.

(g) Forfeiture of Option. – If an Indian tribe employing unit fails to make payments, including interest and penalties, required under this section within 90 days after receipt of the bill, the unit loses the option to make payments by reimbursement in lieu of contributions for the following calendar year unless payment in full is made before contribution rates for the following calendar year are computed. An Indian tribe that has lost the option to make payments by reimbursement in lieu of contributions for a calendar year regains that option for the following calendar year if it makes all contributions timely during the year for which the option was lost, and no payments, penalties, or interest remain outstanding.

(h) Forfeiture of Coverage. – If an Indian tribe employing unit fails to make payments, including interest and penalties, required under this section after all collection activities considered necessary by the Division have been exhausted, services performed for that employing unit are no longer treated as "employment" for the purpose of coverage under this Chapter. An Indian tribe employing unit that has lost coverage regains coverage under this Chapter for services performed for the employing unit if the Division determines that all contributions, payments in lieu of contributions, penalties, and interest have been paid.

The Division must notify the Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage pursuant to this subsection.

(i) Change in Election. – The account of an Indian tribe employing unit that has been paying contributions under this Chapter for a period of at least three consecutive

calendar years and that elects to change to a reimbursement basis must be closed and may not be used in any future computation of the unit's contribution rate in any manner.

"**§ 96-19.34. Surcharge for the Employment Security Reserve Fund.**

(a) Tax imposed. – A tax is imposed upon taxpaying employers at a rate equal to twenty percent (20%) of the amount of contributions due under G.S. 96-19.30. The tax is collected and administered in the same manner as contributions.

(b) Purpose of Tax. – Taxes collected under this section provide revenue for the purposes listed in G.S. 96-6.1. Taxes must be credited to the Employment Security Reserve Fund and refunds of the taxes may be paid from the same fund. Any interest collected on unpaid taxes imposed by this section may be credited to the Special Employment Security Administration Fund, and any interest refunded on taxes imposed by this section may be paid from the same fund.

(c) Suspension of Tax. – The tax does not apply in a calendar year if, as of August 1 of the preceding year, the amount in the State's account in the Unemployment Trust Fund, established pursuant to section 903 of Title IX of the Social Security Act, equals or exceeds one billion dollars ($1,000,000,000).

"**§ 96-19.35. Collection of contributions.**

(a) Interest on Past-Due Contributions. – Contributions unpaid on the date on which they are due and payable, as prescribed by the Division, shall bear interest at the rate set under G.S. 105-241.21 per month from and after that date until payment plus accrued interest is received by the Division. An additional penalty in the amount of ten percent (10%) of the taxes due shall be added. The clear proceeds of any civil penalties levied pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Interest collected pursuant to this subsection shall be paid into the Special Employment Security Administration Fund. If any employer, in good faith, pays contributions to another state or to the United States under the Federal Unemployment Tax Act, prior to a determination of liability by this Division, and the contributions were legally payable to this State, the contributions, when paid to this State, shall be deemed to have been paid by the due date under the law of this State if they were paid by the due date of the other state or the United States.

(b) Collection. –

(1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the Division, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions, except petitions for judicial review under this Chapter and cases arising under the Workers' Compensation Law of this State; or, if any contribution imposed by this Chapter, or any portion thereof, and/or penalties duly provided for the nonpayment thereof shall not be paid within 30 days after the same become due and payable, and after due notice and reasonable opportunity for hearing, the Division, under the

hand of the Assistant Secretary, may certify the same to the clerk of the superior court of the county in which the delinquent resides or has property, and additional copies of said certificate for each county in which the Division has reason to believe the delinquent has property located. If the amount of a delinquency is less than fifty dollars ($50.00), the Division may not certify the amount to the clerk of court until a field tax auditor or another representative of the Division personally contacts, or unsuccessfully attempts to personally contact, the delinquent and collect the amount due. A certificate or a copy of a certificate forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said delinquent may own in said county, with the same force and effect as a judgment rendered by the superior court. The Division shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Division, and when so forwarded and in the hands of such sheriff or agent of the Division, shall have all the force and effect of an execution issued to such sheriff or agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, the Division may in its discretion withhold the issuance of said certificate or execution to the sheriff or agent of the Division for a period not exceeding 180 days from the date upon which the original certificate is certified to the clerk of superior court. The Division is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Division in all cases in which the sheriff or duly authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the Division, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the Division, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection and in such case no agent of the Division shall have the authority to serve any executions or make any collections therein in such county. A return of such execution, or alias execution, shall be made to the Division, together with all moneys collected thereunder, and when such order, execution, or alias is referred to the agent of the Division for service the said agent of the Division shall be vested with all the powers of the sheriff to the extent of serving such order, execution, or alias and levying or collecting thereunder. The

agent of the Division to whom such order or execution is referred shall give a bond not to exceed three thousand dollars ($3,000) approved by the Division for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of executions. If any sheriff of this State or any agent of the Division who is charged with the duty of serving executions shall willfully fail, refuse, or neglect to execute any order directed to him by the said Division and, within the time provided by law, the official bond of such sheriff or of such agent of the Division shall be liable for the contributions, penalty, interest, and costs due by the employer.

(2) Any representative of the Division may examine and copy the county tax listings, detailed inventories, statements of assets, or similar information required under General Statutes, Chapter 105, to be filed with the tax supervisor of any county in this State by any person, firm, partnership, or corporation, domestic or foreign, engaged in operating any business enterprise in such county. Any such information obtained by an agent or employee of the Division shall not be divulged, published, or open to public inspection other than to the Division's employees in the performance of their public duties. Any employee of the Division who violates any provision of this section shall be fined not less than twenty dollars ($20.00), nor more than two hundred dollars ($200.00), or imprisoned for not longer than 90 days, or both.

(3) When the Division furnishes the clerk of superior court of any county in this State a written statement or certificate to the effect that any judgment docketed by the Division against any firm or individual has been satisfied and paid in full, and said statement or certificate is signed by the Secretary of Commerce and attested by the Assistant Secretary, with the seal of the Division affixed, it shall be the duty of the clerk of superior court to file said certificate and enter a notation thereof on the margin of the judgment docket to the effect that said judgment has been paid and satisfied in full, and is in consequence canceled of record. The cancellation shall have the full force and effect of a cancellation entered by an attorney of record for the Division. It shall also be the duty of such clerk, when any such certificate is furnished him by the Division showing that a judgment has been paid in part, to make a notation on the margin of the judgment docket showing the amount of such payment so certified and to file said certificate. This paragraph shall apply to judgments already docketed, as well as to the future judgments docketed by the Division. For the filing of said statement or certificate and making new notations on the record, the clerk of superior court shall be paid a fee of fifty cents (50¢) by the Division.

(c) Priorities under Legal Dissolution or Distributions. – In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of

this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes, and claims for remuneration of not more than two hundred and fifty dollars ($250.00) to each claimant, earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64(a) of that act (U.S.C., Title 11, section 104(a)), as amended.

A receiver of any covered employer placed into an operating receivership pursuant to an order of any court of this State shall pay to the Division any contributions, penalties or interest then due out of moneys or assets on hand or coming into his possession before any such moneys or assets may be used in any manner to continue the operation of the business of the employer while it is in receivership.

(d) Collections of Contributions upon Transfer or Cessation of Business. – The contribution or tax imposed by G.S. 96-9, and subsections thereunder, of this Chapter shall be a lien upon the assets of the business of any employer subject to the provisions hereof who shall lease, transfer, or sell out his business, or shall cease to do business and such employer shall be required, by the next reporting date as prescribed by the Division, to file with the Division all reports and pay all contributions due with respect to wages payable for employment up to the date of such lease, transfer, sale, or cessation of the business and such employer's successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said contributions due and unpaid until such time as the former owner or employer shall produce a receipt from the Division showing that the contributions have been paid, or a certificate that no contributions are due. If the purchaser of a business or a successor of such employer shall fail to withhold purchase money or any money due to such employer in consideration of a lease or other transfer and the contributions shall be due and unpaid after the next reporting date, as above set forth, such successor shall be personally liable to the extent of the assets of the business so acquired for the payment of the contributions accrued and unpaid on account of the operation of the business by the former owner or employer.

(e) Refunds. – If not later than five years from the last day of the calendar year with respect to which a payment of any contributions or interest thereon was made, or one year from the date on which such payment was made, whichever shall be the later, an employer or employing unit who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund, and the Division shall determine that such contributions or any portion thereof was erroneously collected, the Division shall allow such employer or employing unit to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such an adjustment cannot be made in the next succeeding calendar quarter after such application for such refund is received, a cash refund may be made, without interest, from the fund: Provided, that any interest refunded under this subsection, which has been paid into the Special Employment Security Administration Fund established pursuant to G.S. 96-5(c), shall be paid out of such fund.

For like cause and within the same period, adjustment or refund may be so made on the Division's own initiative. Provided further, that nothing in this section or in any other section of this Chapter shall be construed as permitting the refund of moneys due and payable under the law and regulations in effect at the time such moneys were paid. In any case, where the Division finds that any employing unit has erroneously paid to this State contributions or interest upon wages earned by individuals in employment in another state, refund or adjustment thereof shall be made, without interest, irrespective of any other provisions of this subsection, upon satisfactory proof to the Division that such other state has determined the employing unit liable under its law for such contributions or interest.

(f) No injunction shall be granted by any court or judge to restrain the collection of any tax or contribution or any part thereof levied under the provisions of this Chapter nor to restrain the sale of any property under writ of execution, judgment, decree, or order of court for the nonpayment thereof. Whenever any employer, person, firm, or corporation against whom taxes or contributions provided for in this Chapter have been assessed, shall claim to have a valid defense to the enforcement of the tax or contribution so assessed or charged, such employer, person, firm, or corporation shall pay the tax or contribution so assessed to the Division; but if at the time of such payment he shall notify the Division in writing that the same is paid under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time, within 30 days after such payment, demand the same in writing from the Division; and if the same shall not be refunded within 90 days thereafter, he may sue the Division for the amount so demanded; such suit against the Division must be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides, or in the county where the taxpayer conducts his principal place of business; and if, upon the trial it shall be determined that such tax or contribution or any part thereof was for any reason invalid, excessive, or contrary to the provisions of this Chapter, the amount paid shall be refunded by the Division accordingly. The remedy provided by this subsection shall be deemed to be cumulative and in addition to such other remedies as are provided by other subsections of this Chapter. No suit, action, or proceeding for refund or to recover contributions or payroll taxes paid under protest according to the provisions of this subsection shall be maintained unless such suit, action, or proceeding is commenced within one year after the expiration of the 90 days mentioned in this subsection, or within one year from the date of the refusal of the Division to make refund should such refusal be made before the expiration of said 90 days above mentioned. The one-year limitation here imposed shall not be retroactive in its effect, shall not apply to pending litigation, nor shall the same be construed as repealing, abridging or extending any other limitation or condition imposed by this Chapter.

(g) Upon the motion of the Division, any employer refusing to submit any report required under this Chapter, after 10 days' written notice sent by the Division by registered or certified mail to the employer's last known address, may be enjoined by any court of competent jurisdiction from hiring and continuing in employment any employees until such report is properly submitted. When an execution has been returned to the Division unsatisfied, and the employer, after 10 days' written notice sent by the Division

by registered mail to the employer's last known address, refuses to pay the contributions covered by the execution, such employer shall upon the motion of the Division be enjoined by any court of competent jurisdiction from hiring and continuing in employment any employees until such contributions have been paid.

An employer who fails to file a report within the required time shall be assessed a late filing penalty of five percent (5%) of the amount of contributions due with the report for each month or fraction of a month the failure continues. The penalty may not exceed twenty-five percent (25%) of the amount of contributions due. An employer who fails to file a report within the required time but owes no contributions shall not be assessed a penalty unless the employer's failure to file continues for more than 30 days.

(h) When any uncertified check is tendered in payment of any contributions to the Division and such check shall have been returned unpaid on account of insufficient funds of the drawer of said check in the bank upon which same is drawn, a penalty shall be payable to the Division, equal to ten percent (10%) of the amount of said check, and in no case shall such penalty be less than one dollar ($1.00) nor more than two hundred dollars ($200.00).

(i) Except as otherwise provided in this subsection, no suit or proceedings for the collection of unpaid contributions may be begun under this Chapter after five years from the date on which the contributions become due, and no suit or proceeding for the purpose of establishing liability and/or status may be begun with respect to any period occurring more than five years prior to the first day of January of the year within which the suit or proceeding is instituted. This subsection shall not apply in any case of willful attempt in any manner to defeat or evade the payment of any contributions becoming due under this Chapter. A proceeding shall be deemed to have been instituted or begun upon the date of issuance of an order by the Assistant Secretary of the Division directing a hearing to be held to determine liability or nonliability, and/or status under this Chapter of an employing unit, or upon the date notice and demand for payment is mailed by certified mail to the last known address of the employing unit. The order shall be deemed to have been issued on the date the order is mailed by certified mail to the last known address of the employing unit. The running of the period of limitations provided in this subsection for the making of assessments or collection shall, in a case under Title II of the United States Code, be suspended for the period during which the Division is prohibited by reason of the case from making the assessment or collection and for a period of one year after the prohibition is removed.

(j) Waiver of Interest and Penalties. – The Division may, for good cause shown, reduce or waive any interest assessed on unpaid contributions under this section. The Division may reduce or waive any penalty provided in G.S. 96-10(a) or G.S. 96-10(g). The late filing penalty under G.S. 96-10(g) shall be waived when the mailed report bears a postmark that discloses that it was mailed by midnight of the due date but was addressed or delivered to the wrong State or federal agency. The late payment penalty and the late filing penalty imposed by G.S. 96-10(a) and G.S. 96-10(g) shall be waived where the delay was caused by any of the following:

(1) The death or serious illness of the employer or a member of the employer's immediate family or by the death or serious illness of the

person in the employer's organization responsible for the preparation and filing of the report;

(2) Destruction of the employer's place of business or business records by fire or other casualty;

(3) Failure of the Division to furnish proper forms upon timely application by the employer, by reason of which failure the employer was unable to execute and file the report on or before the due date;

(4) The inability of the employer or the person in the employer's organization responsible for the preparation and filing of reports to obtain an interview with a representative of the Division upon a personal visit to the central office or any local office for the purpose of securing information or aid in the proper preparation of the report, which personal interview was attempted to be had within the time during which the report could have been executed and filed as required by law had the information at the time been obtained;

(5) The entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or any of its allies, or the United Nations, provided that the entrance was unexpected and is not the annual two weeks training for reserves; and

(6) Other circumstances where, in the opinion of the Secretary, Assistant Secretary, or their designees, the imposition of penalties would be inequitable.

In the waiver of any penalty, the burden shall be upon the employer to establish to the satisfaction of the Secretary, Assistant Secretary, or their designees that the delinquency for which the penalty was imposed was due to any of the foregoing facts or circumstances.

The waiver or reduction of interest or a penalty under this subsection shall be valid and binding upon the Division. The reason for any reduction or waiver shall be made a part of the permanent records of the employing unit to which it applies.

"**§ 96-19.36. Compromise of liability.**

(a) Authority. – The Secretary may compromise an employer's tax liability under this Article when the Secretary determines that the compromise is in the best interest of the State and makes one or more of the following findings:

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

(2) The taxpayer is insolvent and the Secretary probably could not otherwise collect an amount equal to, or in excess of, the amount offered in compromise. A taxpayer is considered insolvent only in one of the following circumstances:

a. It is plain and indisputable that the taxpayer is clearly insolvent and will remain so in the reasonable future.

b. The taxpayer has been determined to be insolvent in a judicial proceeding.

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

(b) Written Statement. – When the Secretary compromises a tax liability under this section and the amount of the liability is at least one thousand dollars ($1,000), the Secretary must make a written statement that sets out the amount of the liability, the amount accepted under the compromise, a summary of the facts concerning the liability, and the findings on which the compromise is based. The Secretary must sign the statement and keep a record of the statement.

"Part 4. Experience Rating.

"**§ 96-19.40. Employer account.**

(a) Employer Account. – The Division must maintain a separate account for each employer. The Division must charge the employer's account for benefits, as provided in G.S. 96-19.41. The Division must credit the employer's account with all contributions paid by the employer or on the employer's behalf. Any voluntary contributions made by an employer within 30 days after the date of mailing by the Division of notification of contribution rate, as required by G.S. 96-19.30, must be credited to its account as of the previous July 31.

(b) Closed Account. – Except as provided in subsection (c) of this section, when an employer ceases to be an employer, the employer's account must be closed and may not be used in any future computation of the employer's contribution rate.

(c) Acquisition of Existing Business. – When an employer acquires all of the organization, trade, or business of another employing unit, the Division shall transfer the account of the predecessor to the successor employer as of the date of the acquisition for use in the determination of the successor's rate of contributions. This mandatory transfer does not apply when there is no common ownership between the predecessor and the successor and the successor acquired the assets of the predecessor in a sale in bankruptcy. In this circumstance, the successor's rate of contributions is determined without regard to the predecessor's rate of contributions.

When an employer acquires a distinct and severable portion of the organization, trade, or business of another employing unit, the part of the account of the predecessor that relates to the acquired portion of the business may, upon the mutual consent of the parties concerned and approval of the Division, be transferred as of the date of acquisition to the successor employer for use in the determination of the successor's rate of contributions, provided application for transfer is made within 60 days after the Division notifies the successor of the right to request such transfer, otherwise the effective date of the transfer is the first day of the calendar quarter in which the application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade, or business.

Whenever part of an organization, trade, or business is transferred between entities subject to substantially common ownership, management, or control, the account must be transferred in accordance with rules adopted by the Division. However, employing units transferring entities with any common ownership, management, or control are not entitled

to separate and distinct employer status under this Chapter. Provided however, that the transfer of an account for the purpose of computation of rates is considered to have been made prior to the computation date falling within the calendar year within which the effective date of the transfer occurs, and the account must be used in the computation of the rate of the successor employer for succeeding years. No request for a transfer of the account may be accepted and no transfer of the account may be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the Division of the right to request a transfer, whichever occurs later. However, in no event is a request for a transfer allowed if an account has been terminated because an employer ceases to be an employer pursuant to G.S. 96-19.40(b) and G.S. 96-19.22, regardless of the date of notification.

(d) Contributions Credited to Wrong Account. – Whenever contributions are erroneously paid into one account that should have been paid into another account or that should have been paid into a new account, the erroneous payment may be adjusted only by refunding the erroneously paid amounts to the paying entity. No pro rata adjustment to an existing account may be made, nor can a new account be created by transferring any portion of the erroneously paid amount, notwithstanding that the entities involved may be owned, operated, or controlled by the same person or organization. No adjustment of a contribution rate may be made that reduces the rate below the standard rate for any period in which the account was not in actual existence and in which it was not actually chargeable for benefits. Whenever payments are found to have been made to the wrong account, refunds can be made to the entity making the wrongful payment for a period not exceeding five years from the last day of the calendar year in which it is determined that wrongful payments were made. Notwithstanding payment into the wrong account, if an entity is determined to have met the requirements to be a covered employer, whether or not the entity has paid on the account of its employees any sum into another account, the Division must collect contributions at the standard rate or the assigned rate, whichever is higher, for the five years preceding the determination of erroneous payments, which five years runs from the last day of the calendar year in which the determination of liability for contributions or additional contributions is made. This requirement applies regardless of whether the employer acted in good faith.

(e) Interest Credited. – On the computation date, the ratio of the credit balance in each individual account to the total of all the credit balances in all employer accounts must be computed, and an amount equal to the interest credited to this State's account in the unemployment trust fund in the Treasury of the United States for the four most recently completed calendar quarters must be credited prior to the next computation date on a pro rata basis to all employers' accounts having a credit balance on the computation date. The amount must be prorated to the individual accounts in the same ratio that the credit balance in each individual account bears to the total of the credit balances in all such accounts. In computing the amount to be credited to the account of an employer as a result of interest earned by funds on deposit in the unemployment trust fund in the Treasury of the United States to the account of this State, any voluntary contributions made by an employer after July 31 of any year shall not be considered a part of the

account balance of the employer until the next computation date occurring after the voluntary contribution was made.

"**§ 96-19.41. Charging of benefit payments to employer account.**

(a) Allocation of Charged. – Benefits paid to a claimant must be allocated to the account of each base period employer in the proportion that the base period wages paid to an eligible individual in any calendar quarter by each such employer bears to the total wages paid by all base period employers during the base period. The amount allocated is multiplied by one hundred twenty percent (120%) and charged to that employer's account. Benefits paid are charged to employers' accounts upon the basis of benefits paid to claimants whose benefit years have expired.

(b) Charging of Benefits After Separation. – Any benefits paid to a claimant under a claim filed for a period occurring after the date of separation for one of the reasons listed in this subsection may not be charged to the account of an employer by whom the claimant was employed at the time of separation if the employer promptly notifies the Division, in accordance with rules adopted by the Division, of the applicable reason listed below for the separation:

(1) The claimant left work without good cause attributable to the employer.

(2) The employer discharged the claimant for misconduct in connection with his work.

(3) The employer discharged the claimant solely for a bona fide inability to do the work for which the individual was hired and the claimant's period of employment was 100 days or less.

(4) The separation is a disqualifying separation under G.S. 96-19.52.

(c) Benefits Not Chargeable. – The following benefit charges may not be made against an employer's account:

(1) Except as provided in G.S. 96-19.42, benefits paid as a result of a decision by the Division, if the decision to pay benefits is ultimately reversed.

(2) Any benefits paid to any claimant who is attending a vocational school or training program approved by the Division may not be charged to the account of the base period employers.

(3) Any benefits paid to any claimant where all of the following conditions are met:

a. The benefits are paid for unemployment due directly to a major natural disaster.

b. The President has declared the disaster pursuant to the Disaster Relief Act of 1970, 42 U.S.C. 4401, et seq.

c. The benefits are paid to claimants who would have been eligible for disaster unemployment assistance under this Act, if they had not received unemployment insurance benefits with respect to that unemployment.

(d) Current Employer in Base Period. – An employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer

on substantially the same basis and substantially the same amount as had been made available to such individual during his base period, whether the employments were simultaneous or successive. An employer must file a written request with the Division for noncharging of benefits under this subdivision.

"**§ 96-19.42. Employer's reserve ratio.**

(a) Computation. – On August 1 of each year, the Division must determine the balance of each employer's account and compute a reserve ratio for the employer. At the same time the Division notifies an employer of the employer's contribution rate for the succeeding calendar year, it must furnish the employer with a statement of all charges and credits made to the employer's account. The employer may file an application for review or redetermination prior to May 1 following the effective date of the contribution rate.

(b) Credit Reserve Ratio. – For each employer whose account has a credit balance, the Division must compute a credit reserve ratio. An employer's credit reserve ratio is the quotient obtained by dividing the credit balance of the employer's account as of July 31 of each year by the total taxable payroll of the employer for the 36 calendar-month period ending June 30 preceding the computation date. Credit balance as used in this subsection means the total of all contributions paid and credited for all past periods together with all other lawful credits to the account of the employer less the total benefits charged to the account of the employer for all past periods.

(c) Debit Reserve Ratio. – For each employer whose account shows that the total of all of its contributions paid and credited for all past periods together with all other lawful credits is less than the total benefits charged to its account for all past periods, the Division must compute a debit reserve ratio. An employer's debit ratio is the quotient obtained by dividing the debit balance of the employer's account as of July 31 of each year by the total taxable payroll of the employer for the 36 calendar-month period ending June 30 preceding the computation date. The employer's debit balance is the total amount of all benefits charged to the employer's account for all past periods less the total amount of all contributions paid and credited in those periods, together with all other lawful credits of the employer.

(d) Insufficient Employer Report. – If, within the calendar month in which the computation date occurs, the Division finds that any employing unit failed to file a report or filed a report that the Division finds incorrect or insufficient, the Division must make an estimate of the information required from the employing unit on the basis of the best evidence reasonably available to it at the time. The Division must notify the employing unit of the estimates it will use to compute the employer's reserve ratio by registered mail addressed to its last known address. The Division must compute the employing unit's reserve ratio and contribution rate based upon those estimates unless the employing unit files a report or a corrected or sufficient report, as the case may be, within 15 days after the mailing of the notice. The rate so determined may be adjusted on the basis of subsequently ascertained information.

(e) Active Duty. – If the Division finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or of any of its allies, or of the

United Nations, the employer's experience rating account may not be terminated; and, if the business is resumed within two years after the discharge or release from active duty in the Armed Forces of the United States of such person or persons, the employer's account is deemed to have been chargeable with benefits throughout more than 13 consecutive calendar months ending July 31 immediately preceding the computation date. This subsection applies only to employers who are liable for contributions under the experience rating system of financing unemployment benefits. This subsection does not apply to employers who are liable for payments in lieu of contributions or to employers using the reimbursable method of financing benefit payments under G.S. 96-19.32 or G.S. 96-19.33.

"**§ 96-19.43. Transfer of account.**

(a) Mandatory. – When an employer acquires all of the organization, trade, or business of another employing unit, the account of the predecessor shall be transferred as of the date of the acquisition to the successor employer for use in the determination of the successor's rate of contributions. This mandatory transfer does not apply when there is no common ownership between the predecessor and the successor and the successor acquired the assets of the predecessor in a sale in bankruptcy. In this circumstance, the successor's rate of contributions is determined without regard to the predecessor's rate of contributions.

(b) Consent. – When an employer acquires a distinct and severable portion of the organization, trade, or business of another employing unit, the part of the account of the predecessor that relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Division in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition to the successor employer for use in the determination of the successor's rate of contributions, provided application for transfer is made within 60 days after the Division notifies the successor of the right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade, or business. Whenever part of an organization, trade, or business is transferred between entities subject to substantially common ownership, management, or control, the tax account shall be transferred in accordance with regulations. However, employing units transferring entities with any common ownership, management, or control are not entitled to separate and distinct employer status under this Chapter. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of subsection (d) of this section. No request for a transfer of the account will be accepted and no transfer of the account will be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the Division of the right to request such transfer, whichever occurs later. However, in no event will a request for a transfer be allowed if an account has been terminated because an employer ceases to be

an employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification.

(c) Employer Number. – A new employing unit shall not be assigned a discrete employer number when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise. That new employing unit shall continue to be the same employer for the purposes of this Chapter as before the acquisition or change in form. The following assumptions apply in this subsection:

(1) "Control of the business enterprise" may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise.

(2) A "continuity of control" will exist if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the business enterprise after an acquisition or change in form. Evidence of continuity of control shall include, but not be limited to, changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; a limited liability company to an individual proprietorship, partnership, corporation, association, estate, or to another limited liability company; a corporation to an individual proprietorship partnership, limited liability company, association, estate, or to another corporation or from any form to another form.

(d) Rate of Contribution. – Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this Chapter prior to the date of acquisition of the business, the successor's rate of contribution for the period from that date to the end of the then current contribution year shall be the same as the successor's rate in effect on the date of the acquisition. If the successor was not an employer prior to the date of the acquisition of the business, the successor shall be assigned a standard beginning rate of contribution set forth in G.S. 96-9(b)(1) for the remainder of the year in which the successor acquired the business of the predecessor; however, if the successor makes application for the transfer of the account within 60 days after notification by the Division of the right to do so and the account is transferred, or meets the requirements for mandatory transfer, the successor shall be assigned for the remainder of the year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, as long as there was only one predecessor or, if more than one, the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this Chapter, when an account is transferred in its entirety by an employer to a successor, the transferring employer shall thereafter pay the standard beginning rate of contributions set forth in G.S. 96-9(b)(1) and shall continue to pay at that rate until the transferring employer qualifies for a reduction, reacquires the account transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3).

(e) Deceased or Insolvent Employer. – In those cases where the organization, trade, or business of a deceased person, or insolvent debtor is taken over and operated by an administrator, executor, receiver, or trustee in bankruptcy, such employing units shall automatically succeed to the account and rate of contribution of such deceased person, or insolvent debtor without the necessity of the filing of a formal application for the transfer of such account.

"**§ 96-19.44. Program integrity.**

(a) Nonrelief of Charges. – The Division must 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 conditions in this subsection apply. If the claim is a combined-wage claim, the determination of noncharging for the combined-wage claim must 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.

(1) The overpayment occurred because the employer failed to respond timely or adequately to a written or electronic request of the Division for information relating to an unemployment compensation claim. A response is considered untimely if it fails to be made within the time allowed under G.S. 96-19.80(c). A response is considered inadequate if it fails to provide sufficient facts to enable the Division to make a correct determination of benefits. A response may not be considered inadequate if the Division fails to request the necessary information.

(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.

(b) Applicability. – This section applies to erroneous payments established on or after October 1, 2013.

"Part 5. Benefit Eligibility.

"**§ 96-19.50. Register for work and file a valid claim.**

(a) Initial Determination. – An individual who is unemployed may file a claim for benefits. If the Division determines that the individual has registered for work and filed a

valid claim, the individual may qualify for benefits as provided in this Part. A valid claim is one that meets the employment and wage standards set out below for the individual's base period:

(1) Employment. – The individual has been paid wages in at least two quarters of the individual's base period.

(2) Wages. – The individual has been paid wages totaling at least six times the average weekly insured wage during the individual's base period. If an individual lacks sufficient base period wages, then the wage standard for that individual may be determined using the alternative base period.

(b) Waiting Week. – An individual must serve a waiting period of one week with respect to each benefit claim filed.

(c) Qualifying Wages for Second Benefit Year. – An individual whose prior benefit year has expired and who files a new benefit claim is not entitled to benefits unless the individual has been paid qualifying wages since the beginning date of the prior benefit year and before the date the new benefit claim was filed equal to at least six times the average weekly insured wage and has been paid wages in at least two quarters of the individual's base period.

"**§ 96-19.51. Disqualification for benefits.**

(a) Disqualification Period. – The Division must determine whether an individual who has registered for work and filed a valid claim for benefits as required under G.S. 96-19.50 is qualified to receive benefits. A claimant's qualification for benefits is determined based on the reason for separation from employment from the individual's last permanent employer. The individual's last permanent employer is the employer for whom the claimant worked for more than 30 consecutive calendar days, regardless of whether the work was performed on all of those days. A claimant disqualified for benefits under this section may not receive any benefits for the entire one-year benefit period connected with that claim.

(b) Left Work Without Good Cause Attributable to the Employer. – A claimant is disqualified for benefits if it is determined by the Division that the claimant is unemployed because the claimant left work without good cause attributable to the employer. Where a claimant leaves work, the burden of showing good cause attributable to the employer rests on the claimant and the burden may not be shifted to the employer. Where an employee is notified by the employer that the employee will be separated from employment on some future date and the employee leaves work prior to this date because of the impending separation, the employee has left work voluntarily and the leaving is not considered good cause attributable to the employer.

The following circumstances are prima facie evidence of good cause attributable to the employer that may be rebutted by the employer:

(1) Reduction in hours. – Where an individual leaves work due solely to a unilateral and permanent reduction in work hours of more than fifty percent (50%) of the customary scheduled full-time work hours in the establishment, plant, or industry in which the individual was employed.

(2) Reduction in pay. – Where an individual leaves work due solely to a unilateral and permanent reduction in the individual's rate of pay of more than fifteen percent (15%).

(c) Misconduct. – An individual is disqualified for benefits if it is determined by the Division that the individual is, at the time such claim is filed, unemployed because the individual was discharged for misconduct connected with the work. Misconduct connected with the work is conduct evincing a willful or wanton disregard of the employer's interest as is found in deliberate violation or disregard of standards of behavior that the employer has the right to expect of an employee or has explained orally or in writing to an employee or conduct evincing carelessness or negligence of such degree or recurrence as to manifest an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

The following examples are prima facie evidence of misconduct that may be rebutted by the claimant:

(1) Violating the employer's written alcohol or illegal drug policy.

(2) Reporting to work significantly impaired by alcohol or illegal drugs.

(3) Consuming alcohol or illegal drugs on employer's premises.

(4) 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) 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.

(5) Being terminated or suspended from employment after arrest or conviction for an offense involving violence, sex crimes, or illegal 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.

(6) Any physical violence whatsoever related to an employee's work for an employer, including physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general public.

(7) 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.

(8) Theft in connection with the employment.

(9) Forging or falsifying any document or data related to employment, including a previously submitted application for employment.

(10) Violating an employer's written absenteeism policy.

(11) Refusing to perform reasonably assigned work tasks or failing to adequately perform employment duties as evidenced by no fewer than three written reprimands in the 12 months immediately preceding the employee's termination.

(d) Failure to Supply Necessary License. – An individual is disqualified for benefits if the Division determines that the individual is, at the time the claim is filed, unemployed because the individual has been discharged from employment because a

license, certificate, permit, bond, or surety that is necessary for the performance of the individual's employment and that the individual is responsible to supply has been revoked, suspended, or otherwise lost to the individual, or the individual's ability to successfully apply or the individual's application therefor has been lost or denied for a cause that was within the individual's power to control, guard against, or prevent. No showing of misconduct connected with the work is required in order for an individual to be disqualified for benefits under this subsection.

(e) Labor Dispute. – An individual is disqualified for benefits if the Division determines the individual's total or partial unemployment is caused by a labor dispute in active progress at the factory, establishment, or other premises at which the individual is or was last employed or caused after such date by a labor dispute at another place within this State that is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which the individual is or was last employed and that supplies materials or services necessary to the continued and usual operation of the premises at which the individual is or was last employed. An individual disqualified under the provisions of this subsection continues to be disqualified after the labor dispute has ceased to be in active progress for a period of time that is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit.

(f) Self-Employed and Business Owners. – An individual is disqualified for benefits if the Division determines either of the following:

(1) The individual is customarily self-employed and can reasonably return to self-employment.

(2) The individual is, at the time the claim is filed, unemployed because the individual's ownership share of the employing entity was voluntarily sold and, at the time of the sale, one or more of the following existed:

a. The employing entity was a corporation and the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation.

b. The employing entity was a partnership, limited or general, and the individual was a limited or general partner.

c. The employing entity was a proprietorship, and the individual was a proprietor.

(g) Domestic violence. – A claimant may not be disqualified for benefits for leaving work for reasons of domestic violence if the claimant reasonably believes that the claimant's continued employment would jeopardize the safety of the claimant or of any member of the claimant's immediate family. For the purposes of this subsection, a claimant may be a victim of domestic violence if one or more of the following applies:

(1) The claimant has been adjudged an aggrieved party as set forth by Chapter 50B of the General Statutes.

(2) There is evidence of domestic violence, sexual offense, or stalking. Evidence of domestic violence, sexual offense, or stalking may include any one or more of the following:

a. Law enforcement, court, or federal agency records or files.

b. Documentation from a domestic violence or sexual assault program if the claimant is alleged to be a victim of domestic violence or sexual assault.

c. Documentation from a religious, medical, or other professional from whom the claimant has sought assistance in dealing with the alleged domestic violence, sexual abuse, or stalking.

(3) The claimant has been granted program participant status pursuant to G.S. 15C-4 as the result of domestic violence committed upon the claimant or upon a minor child with or in the custody of the claimant by an individual who has or has had a familial relationship with the claimant or minor child.

(h) Military Spouse. – A claimant may not be disqualified for benefits for leaving work to accompany the claimant's spouse to a new place of residence because the spouse has been reassigned from one military assignment to another.

"**§ 96-19.52. Weekly certification.**

(a) Requirements. – A claimant who files a valid claim and is determined by the Division to qualify for benefits must be eligible to receive those benefits for each week in the benefit period. To be eligible to receive a weekly benefit, a claimant must meet all of the following requirements for each weekly benefit period:

(1) File a claim for benefits.

(2) Report at an employment office as requested by the Division.

(3) Meet the work search requirements of subsection (b) of this section.

(b) Work Search Requirements. – A claimant is eligible to receive benefits with respect to any week only if the Division finds the claimant meets all of the following work search requirements:

(1) The individual is able to work.

(2) The individual is available to work.

(3) The individual is actively seeking work.

(4) The individual accepts suitable work when offered.

(c) Able to Work. – An individual is not able to work during any week that the individual is receiving or is applying for benefits under any other State or federal law based on the individual's temporary total or permanent total disability.

(d) Available to Work. – An individual is not available to work during any week that one or more of the following applies:

(1) The individual tests positive for a controlled substance. An individual tests positive for a controlled substance if all of the conditions of this subdivision apply. An employer must report a claimant's positive test for a controlled substance to the Division.

a. The test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes.

b. The test is required as a condition of hire for a job.

c. The job would be suitable work for the claimant.

(2) The individual is incarcerated or has received notice to report or is otherwise detained in any state or federal jail or penal institution. This

subdivision does not apply to an individual who is incarcerated solely on a weekend in a county jail and who is otherwise available for work.

(3) The individual is an alien and is not in satisfactory immigration status under the laws administered by the United States Department of Justice, Immigration and Naturalization Service.

(e) Actively Seeking Work. – The Division's determination of whether an individual is actively seeking work is based upon the following:

(1) The individual is registered for employment services, as required by the Division.

(2) The individual has engaged in an active search for employment that is appropriate in light of the employment available in the labor market and the individual's skills and capabilities.

(3) The individual has sought work on at least two different days during the week and made at least two in-person job contacts with potential employers.

(4) The individual has maintained a record of the individual's work search efforts. The record must include the potential employers contacted, the method of contact, and the date contacted. The individual must provide the record to the Division upon request.

(f) Suitable Work. – The Division's determination of whether an employment offer is suitable must vary based upon the individual's length of unemployment as follows:

(1) During the first 10 weeks of a benefit period, the Division may consider the degree of risk involved to individual's health, safety, and morals; the individual's physical fitness and prior training and experience, the individual's prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and the individual's prior earnings.

(2) During the second 10 weeks of a benefit period, the Division must consider any employment offer paying one hundred twenty percent (120%) of the individual's weekly benefit amount to be suitable work.

(g) Job Attachment. – An individual who is partially unemployed and for whom the employer has filed an attached claim for benefits has satisfied the work search requirements for any given week in the benefit period associated with the attached claim if the Division determines the individual is available for work with the employer that filed the attached claim.

(h) Job Training. – An individual has satisfied the work search requirements for any given week if the Division determines for that week that one or more of the following applies:

(1) Trade Jobs for Success. – The individual is participating in the Trade Jobs for Success initiative under G.S. 143B-438.16.

(2) Reemployment Services. – The claimant is participating in the reemployment services as directed by the Division and is actively seeking work in a manner consistent with the planned reemployment

services. The Division must refer a claimant to reemployment services if the Division finds that the claimant would likely exhaust regular benefits and need reemployment services to make a successful transition to new employment.

(3) Vocational School or Training Program. – The claimant is attending a vocational school or training program approved by the Division.

(i) Federal Labor Standards. – An otherwise eligible individual may not be denied benefits for a given week if the Division determines that for that week the individual refused to accept new work under one or more of the following conditions:

(1) The position offered is vacant due directly to a strike, lockout, or other labor dispute.

(2) The remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(3) The individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization as a condition of employment.

(j) Trade Act of 1974. – An otherwise eligible individual may not be denied benefits for any week because the individual is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor may the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in this law or of any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. For purposes of this subsection, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the Trade Act of 1974, and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

"**§ 96-19.53. Disqualification for the duration of the benefit period.**

(a) Duration. – A claimant who qualified to receive benefits under G.S. 96-19.50 may be disqualified from receiving benefits for the remaining duration of the unemployment period under this section if one or more subsections of this section apply. The period of disqualification under this section begins with the first day of the first week after the disqualifying act occurs with respect to the week an individual files a claim for benefits.

(b) Suitable Work. – An individual is disqualified for benefits if the Division determines that the individual has failed, without good cause, to do one or more of the following:

(1) Apply for available suitable work when so directed by the employment office of the Division.

(2) Accept suitable work when offered.

(3) Return to the individual's customary self-employment when so directed by the Division.

(c) Recall after Layoff. – An individual is disqualified for benefits if it is determined by the Division that the individual is, at the time a claim is filed, unemployed because the individual, without good cause attributable to the employer and after receiving notice from the employer, refused to return to work for a former employer under one or more of the following circumstances:

(1) The individual was recalled within four weeks from a layoff. As used in this subsection, the term "layoff" means a temporary separation from work due to no work available for the individual at the time of separation from work and the individual is retained on the employee's payroll and is a continuing employee subject to recall by the employer.

(2) The individual was recalled in any week in which the work search requirements were satisfied under G.S. 96-19.52(g).

"**§ 96-19.54. Disqualification for receipt of benefits.**

(a) Failure to Meet Work Search Requirements. – A claimant is disqualified from receiving benefits for any week with respect to which the individual fails to file a claim and meet the work search requirements required under G.S. 96-19.52.

(b) Disciplinary Suspension. – A claimant is disqualified from receiving benefits for any week during any part of which the Division finds that work was not available to the individual because he had been placed on a bona fide disciplinary suspension by his employer. To be bona fide, a disciplinary suspension must be based on acts or omissions which constitute fault on the part of the employee and are connected with the work. A single disciplinary suspension does not disqualify any claims week beginning after 30 consecutive calendar days of the suspension. If the individual is still suspended after 30 consecutive calendar days, the individual is considered to have been discharged from work because of the acts or omissions that caused the suspension.

(c) Receipt of Sum from Employer**.** – A claimant is disqualified from receiving benefits for any week with respect to which the individual has received any sum from the employer pursuant to an order of any court, the National Labor Relations Board, any other lawfully constituted adjudicative agency, or by private agreement, consent, or arbitration for loss of pay by reason of discharge. When the amount paid by the employer is in a lump sum and covers a period of more than one week, the amount paid is allocated to the weeks in the period on a pro rata basis as the Division may adopt and if the amount so prorated to a particular week would, if it had been earned by the claimant during that week of unemployment, have resulted in a reduced benefit payment as provided in G.S. 96-19.60, the claimant is entitled to receive a reduced payment if the claimant was otherwise eligible.

Any benefits previously paid for weeks of unemployment with respect to which back pay awards, or other such compensation, are made constitutes an overpayment of benefits and the amount of overpayment must be deducted from the award by the employer prior to payment to the employee, and transmitted within five days to the Division by the employer for application against the overpayment. Any amount of overpayment deducted by the employer and not transmitted to the Division, or the failure of an employer to deduct an overpayment, is subject to the same procedures for collection as is provided for contributions. The removal of any charges made against the employer as a result of any

previously paid benefits must be applied to the calendar year in which the overpayment is transmitted to the Division, and no attempt will be made to relate the credit to the period to which the award applies.

"Part 6. Benefits.

"**§ 96-19.60. Weekly benefit amount.**

(a) Full Weekly Benefit Amount. – The weekly benefit amount for an individual who is totally unemployed is an amount equal to the wages paid to the individual in the last two completed quarters of the individual's base period divided by 52 and rounded to the next lower whole dollar. If this amount is less than fifteen dollars ($15.00), the individual is not eligible for benefits. The weekly benefit amount may not exceed three hundred fifty dollars ($350.00).

(b) Partial Weekly Benefit Amount. – The weekly benefit amount for an individual who is partially unemployed or part-totally employed is a portion of the individual's weekly benefit amount. The portion payable is the difference between the individual's weekly benefit amount and any part of the wages or remuneration that is payable to the individual for a week for which benefits are claimed and that exceeds twenty percent (20%) of the individual's weekly benefit amount. If the amount so calculated is not a whole dollar, the amount must be rounded to the next lower whole dollar. Payments received by an individual under a supplemental benefit plan do not affect the computation of the individual's partial weekly benefit.

(c) Retirement Deduction. – The amount of benefit payable to an individual for any week that begins in a period with respect to which the individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment that is based on the previous work of the individual must be reduced by the amounts of such pension, retirement or retired pay, annuity, or other payment that is reasonably attributable to such week or that is contributed to in part or in total by the individual's base period employers. The amount of all payments received by an individual under the Railroad Retirement Act must be deducted from the individual's benefit amount. Any weekly benefit amounts reduced under this subsection must be rounded to the nearest lower full dollar amount. The amount may not be reduced below zero.

(d) Mandatory Withholding. – The Division must withhold the following from a claimant's benefits, if applicable:

(1) Child support obligations, as determined under G.S. 96-19.63.

(2) Overpayments of benefits, to the extent provided under G.S. 96-19.80.

(e) Voluntary Income Tax Withholding. – Unemployment compensation is subject to federal and State individual income tax. A claimant may elect to have federal and State income tax withheld from the claimant's weekly benefit amount as provided in this subsection. The Division must follow the procedures specified by the United States Department of Labor, the Internal Revenue Service, and the Department of Revenue pertaining to the deducting and withholding of individual income tax. The amounts deducted and withheld from unemployment compensation remain in the Unemployment Insurance Fund until transferred to the appropriate taxing authority as a payment of income tax. When an individual files a new claim for unemployment compensation, the individual must be advised in writing at the time of filing that:

(1) Unemployment compensation is subject to federal and State individual income tax.

(2) Requirements exist pertaining to estimated tax payments.

(3) The individual may elect to have federal individual income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in section 3402 of the Internal Revenue Code.

(4) The individual may elect to have State individual income tax deducted and withheld from the individual's payment of unemployment compensation in an amount determined by the individual.

(5) The individual may change a previously elected withholding status.

(f) Administration. – The Division must establish and maintain individual wage record accounts for each individual who earns wages in covered employment for as long as the wages would be included in a determination of benefits. If two or more deductions are made from an individual's unemployment compensation payment, then the deductions must be deducted and withheld in accordance with priorities established by the Division.

"**§ 96-19.61. Duration of benefits.**

(a) Total Benefit Amount. – The total amount of benefits paid to an individual may not exceed the individual's total benefit amount. The total benefit amount for an individual is determined as follows:

(1) Divide the individual's base-period wages by the average of the wages paid to the individual in the last two completed quarters of the base period.

(2) Multiplying that quotient by eight and two-thirds.

(3) Round the product to the nearest whole number.

(4) Multiply the resulting amount by the individual's weekly benefit amount as determined under G.S. 96-19.60.

(b) Duration. – The number of weeks an individual may receive benefits varies depending on the seasonal adjusted statewide unemployment rate in use at the time the regular unemployment claim is filed. The total benefits paid to an individual may not be less than the individual's average weekly benefit amount multiplied by the minimum number of weeks allowed under the table in subsection (c) of this section. The total benefits paid to an individual may not exceed the lesser of the following:

(1) The individual's average weekly benefit amount multiplied by the maximum number of weeks allowed under the table in subsection (c) of this section.

(2) The individual's total benefit allowed, as calculated under subsection (a) of this section.

(c) Unemployment Rate in Use. – The minimum and maximum number of weeks allowed for a claim filed during a six-month base period depends on the seasonal adjusted statewide unemployment rate in use for that base period. One six-month base period begins on July 1 and one six-month base period begins on January 1. For the period beginning July 1, the Division must use the most recently available seasonal adjusted unemployment rate for the State for the preceding month of April. For the base period

that begins January 1, the Division must use the most recently available seasonal adjusted unemployment rate for the preceding month of October. The seasonal adjusted unemployment rate the Division uses must be the most recent one determined by U.S. Department of Labor, Bureau of Labor Statistics; it is not the rate as revised in the annual benchmark.

Seasonal Adjusted UI Rate	Minimum Number of Weeks	Maximum Number of Weeks
Less than or equal to 5.5%	5	12
Greater than 5.5% up to 6%	6	13
Greater than 6% up to 6.5%	7	14
Greater than 6.5% up to 7%	8	15
Greater than 7% up to 7.5%	9	16
Greater than 7.5% up to 8%	10	17
Greater than 8% up to 8.5%	11	18
Greater than 8.5% up to 9%	12	19
Greater than 9%	13	20

(d) Limitation of Benefits for Business Owners. – This subsection limits the number of weeks an individual may receive benefits to the lesser of six weeks or the applicable weeks determined under this subsection (b) of this section. This subsection applies to an individual who is unemployed based on services performed for a corporation in which the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation.

"**§ 96-19.62. Services provided to an educational institution.**

(a) Individuals Employed by Educational Institutions in a Professional Capacity. – This subsection applies to individuals who provide services to or on behalf of an educational institution in an instructional, research, or principal administrative capacity, regardless of whether the individual is employed by the institution or by an educational service agency. Benefits are not payable to an individual to whom this subsection applies for any week described below:

(1) Academic terms. – For any week commencing during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms, during that period, if the individual performs services in the first of the academic years or terms and there is a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of the academic years or terms.

(2) Holiday recess. – For any week commencing during an established and customary vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

(b) Individuals Employed by Educational Institutions in any other Capacity. – This subsection applies to individuals who provide services to or on behalf of an educational institution in any capacity other than a capacity described in subsection (a) of this section,

regardless of whether the individual is employed by the institution or by an educational service agency. Benefits are not payable to an individual to whom this subsection applies for any week described below:

(1) Academic terms. – For any week commencing during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms, during that period, if the individual performs services in the first of the academic years or terms and there is a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of the academic years or terms. If benefits are denied to an individual under this subdivision and the individual was not offered an opportunity to perform such services for the educational institution for the second of the academic years or terms, the individual is entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subdivision.

(2) Holiday recess. – For any week commencing during an established and customary vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

(c) Educational Service Agency. – The term "educational service agency" has the same meaning as defined in section 3304 of the Code.

"**§ 96-19.63. Professional athletes; aliens.**

(a) Professional Athletes. – Benefits are not payable to an individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons or periods if the individual performs services in the first season or period and there is a reasonable assurance that the individual will perform services in the latter season or period.

(b) Illegal Aliens. – Benefits are not payable to an individual on the basis of any services performed by an alien unless the alien was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services, or was permanently residing in the United States under the color of law. A claimant present in the United States as a result of the application of the provisions of the federal Immigration and Nationality Act is considered to be an alien lawfully present in the United States.

Any data or information required of a claimant to determine whether or not benefits are payable based upon the claimant's alien status must be uniformly required from all individuals making a claim for benefits. A determination that benefits are not payable to a claimant because of the claimant's alien status may be made only upon a preponderance of the evidence.

"**§ 96-19.64. Deduction for child support obligations.**

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

(1) Child support obligation. – Obligations that are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

(2) State or local child support enforcement agency. – An agency of this State or a political subdivision thereof operating pursuant to a plan described in subdivision (1) of this subsection.

(3) Unemployment compensation. – Any compensation found by the Division to be payable to an unemployed individual under the Employment Security Law of North Carolina, including amounts payable by the Division pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(b) Withholding of Child Support Obligation. – An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether the individual owes child support obligations. If an individual discloses that he or she owes child support obligations and the Division determines that the individual is eligible to receive unemployment compensation, the Division shall notify the State or local child support enforcement agency enforcing the child support obligation that the individual has been determined to be eligible for payment of unemployment compensation. Upon payment by the State or local child support enforcement agency of the processing fee in subsection (c) of this section and beginning with any payment of unemployment compensation that would be made to the individual during the current benefit year and more than five working days after the receipt of the processing fee by the Division, the Division shall deduct and withhold from any unemployment compensation otherwise payable to an individual the amount of child support obligation owed. Any amount deducted and withheld under this section is treated as if it were paid to the individual as unemployment compensation and then paid by the individual to the State or local child support enforcement agency in satisfaction of the individual's child support obligations. The amount of child support obligation owed is the first applicable amount listed below:

(1) The amount required to be deducted and withheld from unemployment compensation under a properly served legal process, as that term is defined in section 462(e) of the Social Security Act.

(2) The amount determined pursuant to an agreement submitted to the Division under section 454(20)(B)(i) of the Social Security Act by the State or local child support enforcement agency.

(3) The amount specified by the individual to the Division to be deducted and withheld.

(c) Agreement to Withhold. – The Department of Health and Human Services and the Division may enter into one or more agreements that provide for the payment to the Department of Health and Human Services of child support obligations withheld from an individual's unemployment compensation benefits. The agreement may provide that these payments will be made on an open account basis. The agreement must provide reimbursement to the Division by the State or local child support agency for all

administrative costs incurred by the Division attributable to the requirements of this section. On or before April 1 of each year, the Division must set a schedule of processing fees applicable for the upcoming fiscal year that reflects the Division's best estimate of the administrative costs to the Division of implementing this section. The Division must forward the fee schedule to the Secretary of Health and Human Services. The Division shall begin withholding child support obligations from a recipient's unemployment compensation benefits on the date it receives a written authorization from the Department of Health and Human Services to charge the processing fee to its account with respect to the individual name in the authorization.

"Part 7. Extended Benefits.

"**§ 96-19.70. Extended benefit period.**

(a) Extended Benefit Period. – The State must provide an extended benefit period for a period beginning the third week after a week for which there is an "on indicator" and ends with the latter of the third week after the first week for which there is an "off indicator" or the 13th consecutive week of such period. No extended benefit period may begin before the 14th week following the end of a prior extended benefit period which was in effect with respect to this State.

(b) "On Indicator". – There is an "on indicator" for this State for a week if the Division 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 meets both of the following conditions:

(1) Equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years.

(2) Equaled or exceeded five percent (5%).

(c) "Off Indicator". – There is an "off indicator" for this State for a week if the Division determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment, not seasonally adjusted, under this Chapter meets at least one of the following conditions:

(1) Was less than one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years and was less than six percent (6%).

(2) Was less than five percent (5%).

"**§ 96-19.71. Federally funded extended benefit period.**

The State may only provide an extended benefit period under this section if the federal government funds one hundred percent (100%) of the costs of the extended benefits.

(1) There may be an "on indicator" for this State for a week if the Division 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 equaled or exceeded six percent

(6%). The "off indicator" for this period is the same as provided in G.S. 96-19.70.

(2) There may be an "on indicator" for this State for a week when 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 such week equals or exceeds a six and one-half percent (6.5%), and the average rate of total unemployment in the State, seasonally adjusted, as determined by the United States Secretary of Labor, for the same three-month period equals or exceeds one hundred ten percent (110%) of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years. There is a State "off indicator" for a week under this subdivision, only if, for the period consisting of such week and the immediately preceding 12 weeks, the option specified in this subdivision does not result in an "on indicator".

"**§ 96-19.72. Eligibility for extended benefits.**

(a) Eligibility. – An individual is eligible to receive extended benefits with respect to any week of unemployment in the eligibility period only if the Division finds that with respect to such week:

(1) The individual is an exhaustee, as defined in subsection (b) of this section.

(2) The individual has satisfied the requirements of this Chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits. For purposes of disqualification for extended benefits, the term "suitable work" means any work which is within the individual's capabilities to perform if all of the following conditions are met:

a. The gross average weekly remuneration payable for the work exceeds the sum of the individual's weekly extended benefit amount plus the amount, if any, of supplemental unemployment benefits, as defined in section 501(C)(17)(D) of the Code, payable to such individual for such week.

b. The gross wages payable for the work equal the higher of the minimum wages provided by section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended (without regard to any exemption), or the State minimum wage.

c. The work is offered to the individual in writing and is listed with the State employment service.

d. The considerations contained in G.S. 96-19.53 for determining whether or not work is suitable are applied to the extent that they are not inconsistent with the specific requirements of this subdivision.

e. The individual cannot furnish evidence satisfactory to the Division that the prospects for obtaining work in the individual's customary occupation within a reasonably short period of time are good. If the individual submits evidence that the Division determines is satisfactory for this purpose, the determination of whether or not work is suitable with respect to such individual shall be made in accordance with G.S. 96-19.53 without regard to the definition contained in this subdivision.

(3) The individual has not failed either to apply for or to accept an offer of suitable work referred to the individual by an employment office of the Division, and the individual has furnished the Division with tangible evidence that the individual has actively engaged in a systematic and sustained effort to find work. If an individual is found to be ineligible under this subdivision, the individual shall be ineligible beginning with the week that the individual either failed to apply for or to accept the offer of suitable work or failed to furnish the Division with tangible evidence of being actively engaged in a systematic and sustained effort to find work. An individual determined ineligible under this subdivision remains ineligible for extended benefits until the individual has been employed in each of four subsequent weeks and has earned remuneration equal to not less than four times the individual's weekly benefit amount.

(4) An individual shall not be eligible for extended compensation unless the individual had 20 weeks of full-time insured employment, or the equivalent in insured wages, as determined by a calculation of base period wages based upon total hours worked during each quarter of the base period and the hourly wage rate for each quarter of the base period. For the purposes of this subdivision, the equivalent in insured wages shall be earnings covered by the State law for compensation purposes which exceed 40 times the individual's most recent weekly benefit amount or one and one-half times the individual's insured wages in that calendar quarter of the base period in which the individual's insured wages were the highest.

(b) Exhaustee. – The term "exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period meets each of the following conditions:

(1) Has received, prior to such week, all of the regular benefits that were available to the individual under this Chapter or any other State law. If the individual's benefit year has expired prior to such week, the individual does not have sufficient wages on the basis of which a new benefit year would include such week.

(2) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965,

and such other federal laws as are specified in regulations issued by the United States Secretary of Labor.

(3) Has not received unemployment benefits under the unemployment compensation law of Canada.

"**§ 96-19.73. Benefit Amount and Duration.**

(a) Weekly Extended Benefit Amount. – The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year. For any individual who was paid benefits during the applicable benefit year in accordance with more than one weekly benefit amount, the weekly extended benefit amount shall be the average of such weekly benefit amounts rounded to the nearest lower full dollar amount (if not a full dollar amount). Provided, that for any week during a period in which federal payments to states under Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, P.L. 91-373, are reduced under an order issued under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, P.L. 99-177, the weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be reduced by a percentage equivalent to the percentage of the reduction in the federal payment. The reduced weekly extended benefit amount, if not a full dollar amount, shall be rounded to the nearest lower full dollar amount.

(b) Extended Benefit Duration. – Except as provided in subsection (c) of this section, the total extended benefit amount payable to any eligible individual with respect to his applicable benefit year is fifty percent (50%) of the total amount of regular benefits which were payable to the individual under this Chapter in the applicable benefit year.

(c) End of Extended Benefit Payments. – If the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits. This amount may not be reduced below zero.

"**§ 96-19.74. Charging of benefits to accounts.**

The federal share of any extended benefits may not be charged to the account of a taxpaying employer, but the State share of those benefits are chargeable to the account of the taxpaying employer to the same extent regular benefits payable to the claimant are chargeable to the account of that employer under G.S. 96-19.41. Any extended benefits that are one hundred percent (100%) federally financed may not be charged in any percentage to a taxpaying employer's account.

The federal and State share of extended benefits is chargeable to the account of a base period employer who is a nonprofit entity, governmental entity, or Indian tribe as provided in G.S. 96-19.32 and G.S. 96-19.33.

"**§ 96-19.75. Administration.**

Extended benefits must be administered in accordance with the Federal-State Unemployment Compensation Act of 1970. Claims and payments of extended benefits are to be administered in the same manner as regular benefits. A claimant who is filing an interstate claim under the interstate benefit payment plan is eligible for extended benefits for no more than two weeks when there is an "off indicator" in the state where the claimant files.

Whenever an extended benefit period is to become effective in this State as a result of an "on" indicator, or an extended benefit period is to be terminated in this State as a result of an "off" indicator, the Division must make an appropriate public announcement.

"Part 8. Administration.

"**§ 96-19.80. Claims for benefits.**

(a) ~~Filing.~~Generally. – Claims for benefits ~~shall~~ must be made in accordance with ~~such regulations as the Division may prescribe.~~rules adopted by the Division. ~~Employers may file claims for employees through the use of automation in the case of partial unemployment. Each employing unit shall post and maintain in places readily accessible to individuals performing services for it printed statements, concerning benefit rights, claims for benefits, and such other matters relating to the administration of this Chapter as the Division may direct. Each employing unit shall supply to such individuals copies of such printed statements or other materials relating to claims for benefits as the Division may direct. Such~~ An employer must provide individuals providing services for the employer access to information concerning the unemployment compensation program. The Division must supply an employer with any printed statements and other materials ~~shall be supplied by the Division~~the Division requires an employer provide to individuals ~~to each employing unit~~ without cost to the ~~employing unit.~~employer.

(a1) Attached Claims. – An employer may file claims for employees through the use of automation in the case of partial unemployment. An employer may only file an attached claim for an employee once during a calendar year and the period of partial unemployment for which the claim is filed may not exceed six weeks. To file an attached claim, an employer must pay the Division an amount equal to the full cost of unemployment benefits payable to the employee under the attached claim at the time the attached claim is filed. The Division must credit the amounts paid to the UI Fund.

An employer may file an attached claim under this subsection only if the employer has a positive credit balance in its account as determined under Part 4 of this Article. If an employer does not have a positive credit balance in its account, the employer must remit to the Division an amount equal to the amount necessary to bring the employer's negative credit balance to at least zero at the time the employer files the attached claim.

(b) ~~(1) Initial~~Initial Determination. – A representative designated by the Division ~~shall~~ must promptly examine the claim and ~~shall~~ determine whether or not the claim is valid. If the claim is determined to be not valid for any reason other than lack of base period earnings, the claim ~~shall~~ must be referred to an Adjudicator for a decision as to the issues presented. If the claim is determined to be valid, a monetary determination ~~shall be~~must be issued showing the week with respect to when benefits ~~shall~~ commence, the weekly benefit amount payable, and the potential maximum ~~duration thereof.~~duration of benefits. The Division must furnish the claimant ~~shall be furnished~~ a copy of ~~such~~ the

monetary determination showing the amount of wages paid ~~him~~ the individual by each employer during ~~his~~ the individual's base period and the employers by whom ~~such~~ the wages were paid, ~~his~~ the benefit year, weekly benefit amount, and the maximum amount of benefits that may be paid to ~~him~~ the claimant for unemployment during the benefit year. When a claim is not valid due to lack of earnings in ~~his~~ the base period, the ~~determination shall so designate. The claimant shall be~~claimant is allowed 10 days from the earlier of mailing or delivery of ~~his~~ the monetary determination to the claimant ~~him~~ within which to protest ~~his~~ the monetary ~~determination and~~determination. When a protest is ~~upon the filing of such protest, unless said protest be satisfactorily resolved, the claim shall~~ filed, it must be referred to the Assistant Secretary or designee for a decision as to the issues ~~presented.~~ Presented, unless the protest has already been satisfactorily resolved. The Division must notify all ~~All~~ base period employers, as well as the most recent employer of a claimant on a temporary layoff, ~~shall be notified~~ upon the filing of a claim ~~which~~ that establishes a benefit year.

~~At~~ At any time within one year from the date of the making of an initial determination, the Division on its own initiative may reconsider ~~such~~ the determination if it finds that an error in computation or identity has occurred in connection therewith or that additional wages pertinent to the claimant's benefit status have become available, or if such determination of benefit status was made as a result of a nondisclosure or misrepresentation of a material fact.

~~(2) Adjudication.~~ (c) 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,~~ under Part 5 of this Article, or whether any disqualification should be imposed under ~~G.S. 96-14,~~ Part 5 of this Article, or benefits are denied or adjusted ~~pursuant to G.S. 96-18,~~under Parts 5 or 6 of this Article, the Division shall refer the matter ~~shall be referred~~ to an adjudicator. The adjudicator may consider any matter, ~~document~~ 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~~ must notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator ~~shall be deemed~~is 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~~ Any interested employer ~~shall be~~ is allowed 10 days from the 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. The Division must send contemporaneously to the employer ~~A~~ a copy of the notice of the filing. ~~filing shall be sent contemporaneously to the employer by telefacsimile transmission if a fax number is on file. Provided further, no~~ 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 that 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.

AnThe Division shall provide an employer shall receive with the 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 must include a section referencing the appropriate rules pertaining to appeals and the instructions on how to appeal.

(c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals referee or hearing officer shall must set a hearing in which the parties are given reasonable opportunity to be heard. The conduct of hearings shall beis governed by suitable rules adopted by the Division. The rules need not conform to common law or statutory rules of evidence or technical or formal rules of procedure but shall must provide for the conduct of hearings in suchin a manner as to that will ascertain the substantial rights of the parties. The hearings may be conducted by conference telephone call or other similar means provided that if any party files with the Division prior written objection to the telephone procedure, that party will be afforded an opportunity for an in-person hearing at such place in the State as the Division by rule shall provide. provides. The hearing shall must be scheduled for a time that, as much as practicable, least intrudes on and reasonably accommodates the ordinary business activities of an employer and the return to employment of a claimant. The appeals referee or hearing officer may affirm or modify the conclusion of the adjudicator or and issue a new an appeals decision in which findings of fact and conclusions of law will be are set out or dismiss an appeal when the appellant fails to appear at the appeals hearing to prosecute the appeal after having been duly notified of the appeals hearing. The evidence taken at the hearings before the appeals referee shall be recorded and the decision of the appeals referee shall be deemed to beappeals decision is the final decision of the Division unless within 10 days after the date of notification or mailing of the decision, whichever is earlier earlier, a written appeal is filed pursuant to such rules as adopted by the Board of Review and the Division may adopt. Division. No person may be appointed as an appeals referee or hearing officer unless he or she possesses the minimum qualifications necessary to be a staff attorney eligible for designation by the Division as a hearing officer under G.S. 96-4(q). No appeals referee or hearing officer in full-time permanent status may engage in the private practice of law as defined in G.S. 84-2.1 while serving in office as appeals referee or hearing officer;officer. A violation of this prohibition shall beis grounds for removal. Whenever an appeal is taken from a decision of the appeals referee or hearing officer;an appeals decision, the appealing party shall must submit a clear written statement containing the grounds for the appeal within the time allowed by law for taking the appeal, and if such a timely statement is not submitted, the Board of Review may dismiss the appeal.

(c1)Unless required for disposition of an ex parte matter authorized by law, the Division, Board of Review, appeals referee, or employee assigned to make a decision or to make findings of facts and conclusions of law in a case shall not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for parties to participate.

~~(c2)~~Whenever a party is notified of the appeals decision ~~the Board of Review's or a hearing officer's decision~~ by mail, G.S. 1A-1, Rule 6(e) shall apply, and three days shall be added to the prescribed period to file a written appeal.

(d) Repealed by Session Laws 1977, c. 727, s. 54.

(d1) Continuance. – No continuance ~~shall~~ may be granted except upon application to the Division, the appeals referee, or other authority assigned to make the decision in the matter to be continued. A continuance may be granted only for good cause shown and upon such terms and conditions as justice may require. Good cause for granting a continuance ~~shall include, but not be limited to,~~includes those instances when a party to the proceeding, a witness, or counsel of record has an obligation of service to the State, such as service as a member of the North Carolina General Assembly, or an obligation to participate in a proceeding in a court of greater jurisdiction.

(e) Review by the Board of Review. – The Board of Review may on its own motion affirm, modify, or set aside any appeals decision ~~of an appeals referee, hearing officer, or other employee assigned to make a decision~~ on the basis of the evidence previously submitted in ~~such~~ a case, or direct the taking of additional evidence, or may permit any of the parties to ~~such~~ the decision to initiate further appeals before it, or may provide for group hearings in ~~such~~ cases as the Board of Review finds appropriate. Upon a motion of a party or the Division, the ~~The~~ Board of Review may remove to itself or transfer to ~~an appeals referee, a~~ hearing ~~officer, or other employee assigned to make a decision~~ officer the proceedings on any claim pending before ~~an~~ a Division appeals referee, hearing officer, or other employee assigned to make a decision. A proceeding transferred by the Board to a hearing officer is subject to review by the Board only upon a request by a party to the proceeding for reconsideration. ~~Interested parties~~ The Board of Review shall ~~be~~ promptly ~~notified~~ notify the interested parties of ~~the~~ its findings and ~~decision of the Board of Review.~~decision.

(f) Procedure. – The manner in which disputed claims ~~shall be~~are 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 recording is waived by all interested parties. 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 a fee to the Division ~~such reasonable fee~~ for the transcript as the Division may by ~~regulation~~ rule provide. The fee ~~so prescribed~~ set by the Division ~~for a party shall~~may not exceed the lesser of sixty-five cents ~~(65)~~ (65¢) per page or sixty-five dollars ($65.00) per transcript. The Division may by ~~regulation~~ rule provide for the fee to be waived in ~~such~~ circumstances ~~as it~~ that, in its sole ~~discretion~~ discretion, it deems appropriate but in the case of an appeal in forma pauperis supported by ~~such~~ proofs ~~as are~~ required ~~in~~ by G.S. 1-110, the Division shall waive the fee.

The parties may enter into a stipulation of the facts. If the appeals referee, hearing officer, or other employee assigned to make the decision ~~believes~~ determines the stipulation provides sufficient information to make a decision, then the appeals referee, hearing officer, or other employee assigned to make the decision may accept the stipulation and render a decision based on the stipulation. If the appeals referee, hearing officer, or other employee assigned to make the decision ~~does not believe~~ determines the stipulation ~~provides~~ does not provide sufficient information to make a decision, then the appeals referee, hearing officer, or other employee assigned to make the decision must reject the stipulation. The decision to accept or reject a stipulation must occur in a recorded hearing.

(g) Witness Fees. – Witnesses subpoenaed pursuant to this section ~~shall be~~ are allowed fees at a rate fixed by the Division. ~~Such~~ All fees and ~~all~~ expenses of proceedings involving disputed claims ~~shall be deemed~~ are a part of the expense of administering this Chapter.

(h) Judicial Review. – Any decision of the ~~Division,~~Board of Review, in the absence of judicial review as herein provided, or in the absence of an interested party filing a request for reconsideration, ~~shall become~~ becomes final 30 days after the date of notification or mailing thereof, whichever is earlier. Judicial review ~~shall be~~ is permitted only after a party claiming to be aggrieved by the decision has exhausted his remedies before the ~~Division~~ Board as provided in this Chapter and has filed a petition for review in the superior court of the county in which he resides or has his principal place of business. The petition for review shall explicitly state what exceptions are taken to the decision or procedure of the ~~Division~~ Board and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the petitioner shall serve copies of the petition by personal service or by certified mail, return receipt requested, upon the ~~Division~~ Board and upon all parties of record to the ~~Division~~ Board proceedings. ~~Names and addresses of the parties shall be furnished to the petitioner by the Division upon request.~~The Board shall, upon request, furnish to the petitioner the names and addresses of the parties. The ~~Division shall be deemed to be~~ Board is a party to any judicial action involving any of its decisions and may be represented in the judicial action by any qualified attorney who has been designated by it for that purpose. The Superior Court shall determine any ~~Any~~questions regarding the requirements of this subsection concerning the service or filing of a ~~petition shall be determined by the superior court.~~ petition. Any party to the ~~Division~~ Board proceeding may become a party to the review proceeding by notifying the court within 10 days after receipt of the copy of the petition. Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

Within 45 days after receipt of the copy of the petition for review or within such additional time as the court may allow, the ~~Division~~ Board shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional cost as is occasioned by the refusal.

The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(i) Review Proceedings. – If a timely petition for review has been filed and served as provided in G.S. 96-15(h), the court may make party defendant any other party it deems necessary or proper to a just and fair determination of the case. The ~~Division~~ Board may, in its discretion, certify to the reviewing court questions of law involved in any decision by it. In any judicial proceeding under this section, the findings of fact by the ~~Division,~~ Board, if there is any competent evidence to support them and in the absence of fraud, ~~shall be~~ are conclusive, and the jurisdiction of the court ~~shall be~~ is confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner and shall be given precedence over all civil cases. An appeal may be taken from the judgment of the superior court, as provided in civil cases. The ~~Division shall have~~Board has the right to appeal to the appellate division from a decision or judgment of the superior court and for such purpose ~~shall be deemed to be~~ is an ~~aggrieved~~ party. No bond ~~shall be~~ is required of the ~~Division~~ Board upon appeal. Upon the final determination of the case or proceeding, the ~~Division~~ Board shall enter an order in accordance with the determination. When an appeal has been entered to any judgment, order, or decision of the court below, no benefits ~~shall~~ may be paid pending a final determination of the cause, except in those cases in which the final decision of the ~~Division~~ Board allowed benefits.

(j) Repealed by Session Laws 1985, c. 197, s. 9.

(k) Rule-making. – The ~~Irrespective of any other provision of this Chapter, the~~ Division may adopt ~~minimum regulations~~ rules necessary to provide for the payment of benefits to individuals ~~promptly when due as required by section 303(a)(1) of the Social Security Act as amended (42 U.S.C.A., section 503(a)(1)).~~and the administration of this Chapter.

"**§ 96-19.81. Seasonal pursuits.**

(a) Defined. – A seasonal pursuit is one which, because of seasonal conditions making it impracticable or impossible to do otherwise, customarily carries on production operations only within a regularly recurring active period or periods of less than an aggregate of 36 weeks in a calendar year. ~~No pursuit shall be deemed seasonal unless and until so found by the Division; except that from March 27, 1953, any successor under G.S. 96-8(5)b to a seasonal pursuit shall be deemed seasonal unless such successor shall within 120 days after the acquisition request cancellation of the determination of status of such seasonal pursuit; provided further that this provision shall not be applicable to pending cases nor retroactive in effect.~~

(b) Application. – Upon application ~~therefor by a pursuit,~~by a pursuit, the Division ~~shall~~ may determine or redetermine ~~whether such~~that a pursuit is seasonal and, if seasonal, the active period or periods thereof. The Division may, on its own motion, redetermine the active period or periods of a seasonal pursuit. An application for a seasonal determination must be made on forms prescribed by the Division and must be made at least 20 days prior to the beginning date of the period of production operations for which a determination is requested.

(c) Notice. – Whenever the Division has determined or redetermined a pursuit to be seasonal, it must notify ~~such~~ the pursuit ~~shall be notified immediately,~~immediately ~~and such~~ and the notice ~~shall~~ must contain the beginning and ending dates of the pursuit's active period or periods. ~~Such pursuits shall~~ The pursuit must display notices of its seasonal determination conspicuously on its premises in a sufficient number of places to be available for inspection by its workers. ~~Such~~ The Division must furnish the appropriate ~~notices shall be furnished by the Division.~~notices.

(d) Effective Date. – A seasonal determination ~~shall become~~becomes effective unless an interested party files an application for review within 10 days after the beginning date of the first period of production operations to which it applies. ~~Such an~~ The application for review ~~shall be deemed to be~~ is an application for a determination of status, as provided in G.S. 96-4, subsections (m) through (q), of this Chapter, and shall be heard and determined in accordance with the provisions thereof.

(e) Wages. – All wages paid to a seasonal worker during ~~his~~ the individual's base period ~~shall~~ must be used in determining ~~his~~ the individual's weekly benefit ~~amount; provided however, that all weekly benefit amounts so determined shall be~~amount, rounded to the nearest lower full dollar ~~amount (if not a full dollar amount).~~amount.

(f) Eligibility for Benefits. – A seasonal worker is eligible to receive benefits as provided in this subsection.

(1) A seasonal worker ~~shall be~~ is eligible to receive benefits based on seasonal wages only for a week of unemployment which occurs, or the greater part of which occurs within the active period or periods of the seasonal pursuit or pursuits in which he earned base period wages.

(2) A seasonal worker ~~shall be~~ is eligible to receive benefits based on nonseasonal wages for any week of unemployment which occurs during any active period or periods of the seasonal pursuit in which ~~he~~ the worker has earned base period wages provided ~~he~~ the worker has exhausted benefits based on seasonal wages. ~~Such~~ The worker ~~shall~~ is also ~~be~~ eligible to receive benefits based on nonseasonal wages for any week of unemployment ~~which~~ that occurs during the inactive period or periods of the seasonal pursuit in which he earned base period wages irrespective as to whether he has exhausted benefits based on seasonal wages.

(3) The maximum amount of benefits ~~which~~ that a seasonal worker ~~shall be~~ is eligible to receive based on seasonal wages ~~shall be~~ is an amount, adjusted to the nearest multiple of one dollar ($1.00), determined by multiplying the maximum benefits payable in his benefit year, as provided in G.S. 96-12(d) of this Chapter, by the percentage obtained by dividing the seasonal wages in his base period by all of his base period wages.

(4) The maximum amount of benefits ~~which~~ that a seasonal worker ~~shall be~~ is eligible to receive based on nonseasonal wages ~~shall be~~ is an amount, adjusted to the nearest multiple of one dollar ($1.00), determined by multiplying the maximum benefits payable in his benefit year, as

provided in G.S. 96-12(d) of this Chapter, by the percentage obtained by dividing the nonseasonal wages in his base period by all of his base period wages.

(5) In no case ~~shall~~ is a seasonal worker ~~be~~ eligible to receive a total amount of benefits in a benefit year in excess of the maximum benefits payable for such benefit year, as provided in G.S. 96-12(d) of this Chapter.

(g) Charging of Account. – Benefits paid to a seasonal worker shall be charged in accordance with this subsection.

(1) All benefits paid to a seasonal worker based on seasonal wages shall be charged, as prescribed in G.S. 96-9(c)(2) of this Chapter, against the account of ~~his~~ the worker's base period employer or employers who paid ~~him~~ the worker ~~such~~ the seasonal wages, and for the purpose of this paragraph ~~such~~ the seasonal wages ~~shall be deemed to~~ constitute all of ~~his~~ the worker's base period wages.

(2) All benefits paid to a seasonal worker based on nonseasonal wages shall be charged, as prescribed in G.S. 96-9(c)(2) of this Chapter, against the account of ~~his~~ the worker's base period employer or employers who paid ~~him~~ the worker ~~such~~ the nonseasonal wages, and for the purpose of this paragraph ~~such~~ the nonseasonal wages ~~shall be deemed to~~ constitute all of ~~his~~ the worker's base period wages.

(h) Calculation of Benefits. – The benefits payable to any otherwise eligible individual ~~shall be~~ are calculated in accordance with this section for any benefit year ~~which~~ that is established on or after the beginning date of a seasonal determination applying to a pursuit by which such individual was employed during the base period applicable to such benefit year, as if such determination had been effective in ~~such~~ the base period.

(i) Appeal. – Nothing in this section ~~shall be construed to limit~~limits the right of any individual whose claim for benefits is determined in accordance herewith to appeal from ~~such~~ the determination as provided in G.S. 96-15 of this Chapter.

(j) Definitions. – The following definitions apply in this section:~~As used in this section:~~

(1) ~~"Pursuit" means an~~Pursuit. – An employer or branch of an employer.

(2) ~~"Branch of an employer" means a~~ Branch of an employer. – A part of an employer's activities which is carried on or is capable of being carried on as a separate enterprise.

(3) ~~"Production operations" mean all~~ Production operations. – All the activities of a pursuit which are primarily related to the production of its characteristic goods or services.

(4) ~~"Active period or periods" of a seasonal pursuit means the~~ Active period of a seasonal pursuit. – The longest regularly recurring period or periods within which production operations of the pursuit are customarily carried on.

(5) ~~"Seasonal wages" mean the~~ Seasonal wages. – The wages earned in a seasonal pursuit within its active period or periods. The Division may prescribe by ~~regulation~~ rule the manner in which seasonal wages ~~shall be~~ are reported.

(6) ~~"Seasonal worker" means a~~ Seasonal worker. – A worker at least twenty-five percent (25%) of whose base period wages are seasonal wages.

(7) ~~"Interested party" means any~~ Interested party. – An individual affected by a seasonal determination.

(8) ~~"Inactive period or periods" of a seasonal pursuit means that~~ Inactive period of a seasonal pursuit. – The part of a calendar year ~~which~~ that is not included in the active period or periods of such pursuit.

(9) ~~"Nonseasonal wages" mean the~~Nonseasonal wages. – The wages earned in a seasonal pursuit within the inactive period or periods of such pursuit, or wages earned at any time in a nonseasonal pursuit.

~~(10) "Wages" mean remuneration for employment.~~

"**§ 96-19.82. Protection of witnesses from discharge, demotion, or intimidation.**

(a) No person may discharge, demote, or threaten any person because that person has testified or has been summoned to testify in any proceeding under the Employment Security Act.

(b) Any person who violates the provisions of this section ~~shall be~~is liable in a civil action for reasonable damages suffered by any person as a result of the violation, and an employee discharged or demoted in violation of this section ~~shall be~~is entitled to be reinstated to his former position. The burden of proof ~~shall be~~ is upon the party claiming a violation to prove a claim under this section.

(c) The General Court of Justice ~~shall have~~has jurisdiction over actions under this section.

(d) The statute of limitations for actions under this section ~~shall be~~ is one year pursuant to G.S. 1-54."

"**§ 96-19.83. Protection of witness before the Employment Security Commission.**

~~If any~~ A person who does any one or more of the following is guilty of a Class 1 misdemeanor:

(1) ~~shall by threats, menace, or in any other manner intimidate or attempt~~ Intimidates or attempts to intimidate any person who is summoned or ~~acting as~~ who is a witness in any proceeding brought under the Employment Security ~~Act, or prevent~~Act.

(2) Prevents or ~~deter,~~ deters, or ~~attempt~~ attempts to prevent or ~~deter~~ deter, any person summoned or acting as ~~such~~ a witness from ~~attendance upon such~~attending a ~~proceeding, he shall be guilty of a Class 1 misdemeanor.~~proceeding brought under the Employment Security Act.

"**§ 96-19.84. Protection of rights and benefits; attorney representation; prohibited ~~fees; deductions for child support obligations.~~fees.**

(a) Waiver of Rights Void. – Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this Chapter ~~shall be~~ is void. Any

agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this Chapter from such employer, ~~shall be~~ is void. No employer ~~shall~~ may directly or indirectly make or require or accept any deduction from the remuneration of individuals in his employ to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) or be imprisoned for not more than six months, or both.

(b) Representation. – Any claimant or employer who is a party to any proceeding before the Division may be represented by (i) an attorney; or (ii) any person who is supervised by an attorney, however, the attorney need not be present at any proceeding before the Division.

(b1) Fees Prohibited. – Except as otherwise provided in this Chapter, the Division may not charge fees of any kind to ~~no~~ an individual claiming benefits in any administrative proceeding under this ~~Chapter shall be charged fees of any kind by the Division or its representative,~~ Chapter, and in any court proceeding under this Chapter each party ~~shall bear~~bears its own costs and legal fees.

(c) No Assignment of ~~Benefits; Exemptions.~~ Benefits. – Except as provided in ~~subsection (d) of this section,~~ G.S. 96-19.60, any assignment, pledge, or encumbrance of any right to benefits ~~which~~ that are or may become due or payable under this Chapter ~~shall be is void; and such rights~~void. An individual's ~~to benefits~~benefits ~~shall be~~ are exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of ~~debts; and benefits received by any individual,~~ debts. An individual's benefits, so long as they are not mingled with other funds of the recipient, ~~shall be~~ are exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessaries furnished to ~~such~~ the individual or ~~his~~ the individual's spouse or dependents during the time when ~~such~~ the individual was unemployed. Any waiver of ~~any~~ an exemption provided for in this subsection ~~shall be~~is void.

~~(d) (1) Definitions. – For the purpose of this subsection and when used herein:~~

~~a. "Unemployment compensation" means any compensation found by the Division to be payable to an unemployed individual under the Employment Security Law of North Carolina (including amounts payable by the Division pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment) provided, that nothing in this subsection shall be construed to limit the Division's ability to reduce or withhold benefits, otherwise payable, under authority granted elsewhere in this Chapter including but not limited to reductions for wages or earnings while unemployed and for the recovery of previous overpayments of benefits.~~

~~b. "Child support obligation" includes only obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of~~

Health and Human Services under Part D of Title IV of the Social Security Act.

c. "State or local child support enforcement agency" means any agency of this State or a political subdivision thereof operating pursuant to a plan described in subparagraph b. above.

(2) a. An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether the individual owes child support obligations, as defined under subparagraph (1)b. of this subsection. If any such individual discloses that he or she owes child support obligations and is determined by the Division to be eligible for payment of unemployment compensation, the Division shall notify the State or local child support enforcement agency enforcing such obligation that such individual has been determined to be eligible for payment of unemployment compensation.

b. Upon payment by the State or local child support enforcement agency of the processing fee provided for in paragraph (4) of this subsection and beginning with any payment of unemployment compensation that, except for the provisions of this subsection, would be made to the individual during the then current benefit year and more than five working days after the receipt of the processing fee by the Division, the Division shall deduct and withhold from any unemployment compensation otherwise payable to an individual who owes child support obligations:

1. The amount specified by the individual to the Division to be deducted and withheld under this paragraph if neither subparagraph 2. nor subparagraph 3. of this paragraph is applicable; or

2. The amount, if any, determined pursuant to an agreement submitted to the Division under section 454(20)(B)(i) of the Social Security Act by the State or local child support enforcement agency, unless subparagraph 3. of this paragraph is applicable; or

3. Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to properly served legal process, as that term is defined in section 462(e) of the Social Security Act.

c. Any amount deducted and withheld under paragraph b. of this subdivision shall be paid by the Division to the appropriate State or local child support enforcement agency.

d. The Department of Health and Human Services and the Division are hereby authorized to enter into one or more agreements which may provide for the payment to the Division of the processing fees referred to in subparagraph b. and the payment to

the Department of Health and Human Services of unemployment compensation benefits withheld, referred to in subparagraph c., on an open account basis. Where such an agreement has been entered into, the processing fee shall be deemed to have been made and received (for the purposes of fixing the date on which the Division will begin withholding unemployment compensation benefits) on the date a written authorization from the Department of Health and Human Services to charge its account is received by the Division. Such an authorization shall apply to all processing fees then or thereafter (within the then current benefit year) chargeable with respect to any individual name in the authorization. Any agreement shall provide for the reimbursement to the Division of any start-up costs and the cost of providing notice to the Department of Health and Human Services of any disclosure required by subparagraph a. Such an agreement may dispense with the notice requirements of subparagraph a. by providing for a suitable substitute procedure, reasonably calculated to discover those persons owing child support obligations who are eligible for unemployment compensation payments.

(3) Any amount deducted and withheld under paragraph (2) of this subdivision shall, for all purposes, be treated as if it were paid to the individual as unemployment compensation and then paid by such individual to the State or local child support enforcement agency in satisfaction of the individual's child support obligations.

(4) a. On or before April 1 of 1983 and each calendar year thereafter, the Division shall set and forward to the Secretary of Health and Human Services for use in the next fiscal year, a schedule of processing fees for the withholding and payment of unemployment compensation as provided for in this subsection, which fees shall reflect its best estimate of the administrative cost to the Division generated thereby.

b. At least 20 days prior to September 25, 1982, the Division shall set and forward to the Secretary of Health and Human Services an interim schedule of fees which will be in effect until July 1, 1983.

c. The provisions of this subsection apply only if arrangements are made for reimbursement by the State or local child support agency for all administrative costs incurred by the Division under this subsection attributable to child support obligations enforced by the agency.

"Part 9. Enforcement.

"**§ 96-19.90. Penalties.**

(a) False Representation. – It ~~shall be~~ is unlawful for any person to make a false statement or representation knowing it to be false or to knowingly fail to disclose a material fact to obtain or increase any benefit under this Chapter or under an employment security law of any other state, the federal government, or of a foreign government, either for himself or any other person. Records, with any necessary authentication thereof, required in the prosecution of any criminal action brought by another state or foreign government for misrepresentation to obtain benefits under the law of this State shall be made available to the agency administering the employment security law of any such state or foreign government for the purpose of such prosecution. Photostatic copies of all records of agencies of other states or foreign governments required in the prosecution of any criminal action under this section shall be as competent evidence as the originals when certified under the seal of such agency, or when there is no seal, under the hand of the keeper of ~~such~~ the records.

(1) A person who violates this subsection ~~shall be found~~ is guilty of a Class I felony if the value of the benefit wrongfully obtained is more than four hundred dollars ($400.00).

(2) A person who violates this subsection ~~shall be found~~ is guilty of a Class 1 misdemeanor if the value of the benefit wrongfully obtained is four hundred dollars ($400.00) or less.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contributions or other payment required from an employing unit under this Chapter, or who willfully fails or refuses to furnish any reports required hereunder, or to produce or permit the inspection or copying of records as required hereunder, ~~shall be~~ is guilty of a Class 1 misdemeanor; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal ~~shall constitute~~ constitutes a separate offense.

(b1) Except as provided in this subsection, the penalties and other provisions in subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance contributions under this Chapter to the same extent that they apply to taxes as defined in G.S. 105-228.90(b)(7). The Division has the same powers under those subdivisions with respect to unemployment insurance contributions as does the Secretary of Revenue with respect to taxes as defined in G.S. 105-228.90(b)(7).

G.S. 105-236(9a) applies to a "contribution tax return preparer" to the same extent as it applies to an income tax preparer. As used in this subsection, a "contribution tax return preparer" is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this Chapter or any claim for refund of tax imposed by this Chapter. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the

employer, by whom the person is regularly and continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

The penalty in G.S. 105-236(7) applies with respect to unemployment insurance contributions under this Chapter only when one of the following circumstances exist in connection with the violation:

(1) Any employing units employing more than 10 employees.

(2) A contribution of more than two thousand dollars ($2,000) has not been paid.

(3) An experience rating account balance is more than five thousand dollars ($5,000) overdrawn.

If none of the circumstances set forth in subdivision (1), (2), or (3) of this subsection exist in connection with a violation of G.S. 105-236(7) applied under this Chapter, the offender is guilty of a Class 1 misdemeanor and each day the violation continues constitutes a separate offense.

If the Division finds that any person violated G.S. 105-236(9a) and is not subject to a fraud penalty, the person shall pay a civil penalty of five hundred dollars ($500.00) per violation for each day the violations continue, plus the reasonable costs of investigation and enforcement.

(c) Any person who ~~shall~~ willfully ~~violate~~ violates any provisions of this Chapter or any rule ~~or regulation thereunder,~~ adopted under it, the violation of which is made unlawful or the observance of which is required under the terms of this Chapter, or for which a penalty is neither prescribed herein nor provided by any other applicable statute, ~~shall be~~ is guilty of a Class 1 misdemeanor, and each day ~~such~~ the violation continues ~~shall be deemed to be~~ is a separate offense.

(d) Repealed by Session Laws 1983, c. 625, s. 15.

(e) An individual ~~shall not be~~ is not entitled to receive benefits for a period of 52 weeks beginning with the first day of the week following the date that notice of determination or decision is mailed finding that he, or another in his behalf with his knowledge, has been found to have knowingly made a false statement or misrepresentation, or who has knowingly failed to disclose a material fact to obtain or increase any benefit or other payment under this Chapter.

(f) Repealed by Session Laws 1983, c. 625, s. 15.

(g) (1) Repealed by Session Laws 2012-134, s. 4(b), effective October 1, 2012.

(2) Any person who has received any sum as benefits under this Chapter by reason of the nondisclosure or misrepresentation by him or by another of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) or has been paid benefits to which he was not entitled for any reason (including errors on the part of any representative of the Division) shall be liable to repay such sum to the Division as provided in subdivision (3) of this subsection.

(3) The Division may collect the overpayments provided for in this subsection by one or more of the following procedures as the Division may, except as provided herein, in its sole discretion choose:

a. If, after due notice, any overpaid claimant shall fail to repay the sums to which he was not entitled, the amount due may be collected by civil action in the name of the Division, and the cost of such action shall be taxed to the claimant. Civil actions brought under this section to collect overpayments shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this Chapter.

b. If any overpayment recognized by this subsection shall not be repaid within 30 days after the claimant has received notice and demand for same, and after due notice and reasonable opportunity for hearing (if a hearing on the merits of the claim has not already been had) the Division, under the hand of the Assistant Secretary, may certify the same to the clerk of the superior court of the county in which the claimant resides or has property, and additional copies of said certificate for each county in which the Division has reason to believe such claimant has property located; such certificate and/or copies thereof so forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said claimant may own in said county, with the same force and effect as a judgment rendered by the superior court. The Division shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Division, and when so forwarded and in the hands of such sheriff or agent of the Division, shall have all the force and effect of an execution issued to such sheriff or agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. The Division is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or a duly authorized agent of the Division in all cases in which the sheriff or duly authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the Division, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the Division, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection

and in such case, no agent of the Division shall have the authority to serve any executions or make any collections therein in such county. A return of such execution or alias execution, shall be made to the Division, together with all moneys collected thereunder, and when such order, execution or alias is referred to the agent of the Division for service, the said agent of the Division shall be vested with all the powers of the sheriff to the extent of serving such order, execution or alias and levying or collecting thereunder. The agent of the Division to whom such order or execution is referred shall give a bond not to exceed three thousand dollars ($3,000) approved by the Division for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of execution. If any sheriff of this State or any agent of the Division who is charged with the duty of serving executions shall willfully fail, refuse or neglect to execute any order directed to him by the said Division and within the time provided by law, the official bond of such sheriff or of such agent of the Division shall be liable for the overpayments and costs due by the claimant. Additionally, the Division or its designated representatives in the collection of overpayments shall have the powers enumerated in G.S. 96-10(b)(2) and (3).

c. Any person who has been found by the Division to have been overpaid under subparagraph (1) above shall be liable to have such sums deducted from future benefits payable to him under this Chapter.

d. Any person who has been found by the Division to have been overpaid under subparagraph (2) above shall be liable to have such sums deducted from future benefits payable to him under this Chapter in such amounts as the Division may by ~~regulation~~ rule prescribe but no such benefit payable for any week shall be reduced by more than fifty percent (50%) of that person's weekly benefit amount.

e. To the extent permissible or required under the laws and Constitution of the United States, the Division is authorized to enter into or cooperate in arrangements or reciprocal agreements with appropriate and duly authorized agencies of other states or the United States Secretary of Labor, or both, whereby: (1) Overpayments of unemployment benefits as determined under subparagraphs (1) and (2) above shall be recovered by offset from unemployment benefits otherwise payable under the unemployment compensation law of another state, and overpayments of unemployment benefits as determined under the unemployment compensation law of such other state shall be

recovered by offset from unemployment benefits otherwise payable under this Chapter; and, (2) Overpayments of unemployment benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this State under an agreement with the United States Secretary of Labor, shall be recovered by offset from unemployment benefits otherwise payable under this Chapter or any such federal program, or under the unemployment compensation law of another state or any such federal unemployment benefit or allowance program administered by such other state under an agreement with the United States Secretary of Labor if such other state has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by Section 303(g)(2) of the federal Social Security Act, if the United States agrees, as provided in the reciprocal agreement with this State entered into under such Section 303(g)(2) of the Social Security Act, that overpayments of unemployment benefits as determined under subparagraphs (1) and (2) above, and overpayment as determined under the unemployment compensation law of another state which has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by Section 303(g)(2) of the Social Security Act, shall be recovered by offset from benefits or allowances for unemployment otherwise payable under a federal program administered by this State or such other state under an agreement with the United States Secretary of Labor.

f. The Division may in its discretion decline to collect overpayments to claimants if the claimant has deceased after the payment was made. In such a case the Division may remove the debt of the deceased claimant from its records.

(h) **(Effective October 1, 2013)** Mandatory Federal Penalty. – A person who has been held ineligible for benefits under subsection (e) of this section and who, because of those same acts or omissions, has received any sum as benefits under this Chapter to which the person is not entitled shall be assessed a penalty in an amount equal to fifteen percent (15%) of the amount of the erroneous payment. The penalty amount shall be payable to the Unemployment Insurance Fund. The penalty applies to an erroneous payment made under any State program providing for the payment of unemployment compensation as well as an erroneous payment made under any federal program providing for the payment of unemployment compensation. The notice of determination or decision advising the person that benefits have been denied or adjusted pursuant to subsection (e) of this section must include the reason for the finding of an erroneous payment, the penalty amount assessed under this subsection, and the reason the penalty has been applied.

The penalty amount may be collected in any manner allowed for the recovery of the erroneous payment, except that the penalty amount may not be recovered through offsets of future benefits. When a recovery with respect to an erroneous payment is made, any recovery applies first to the principal of the erroneous payment, then to the federally mandated penalty amount imposed under this subsection, and finally to any other amounts due."

"**§ 96-19.91. Attachment and garnishment of fraudulent overpayment.**

(a) Applicability. – This section applies to a claimant that has been provided notice of a determination or an appeals decision finding that the claimant, or another individual acting in the claimant's behalf and with the claimant's knowledge, has knowingly done one or more of the following to obtain or increase a benefit or other payment under this Chapter:

(1) Made a false statement or misrepresentation.

(2) Failed to disclose a material fact.

(b) Attachment and Garnishment. – Intangible property that belongs to a claimant, is owed to a claimant, or has been transferred by a claimant under circumstances that would permit it to be levied upon if it were tangible property is subject to attachment and garnishment in payment of a fraudulent overpayment that is due from the claimant and is collectible under this Article. Intangible personal property includes bank deposits, rent, salaries, wages, property held in the Escheat Fund, and any other property incapable of manual levy or delivery.

A person who is in possession of intangible property that is subject to attachment and garnishment is the garnishee and is liable for the amount the claimant owes. The liability applies only to the amount of the claimant's property in the garnishee's possession, reduced by any amount the claimant owes the garnishee.

The Secretary may submit to a financial institution, as defined in G.S. 53B-2, information that identifies a claimant who owes a fraudulent overpayment that is collectible under this section and the amount of the overpayment. The Secretary may submit the information on a quarterly basis or, with the agreement of the financial institution, on a more frequent basis. A financial institution that receives the information must determine the amount, if any, of intangible property it holds that belongs to the claimant and must inform the Secretary of its determination. The Secretary must reimburse a financial institution for its costs in providing the information, not to exceed the amount payable to the financial institution under G.S. 110-139 for providing information for use in locating a noncustodial parent.

No more than ten percent (10%) of a claimant's wages or salary is subject to attachment and garnishment. The wages or salary of an employee of the United States, the State, or a political subdivision of the State are subject to attachment and garnishment.

(c) Notice. – Before the Department attaches and garnishes intangible property in payment of a fraudulent overpayment, the Department must send the garnishee a notice of garnishment. The notice must be sent either in person, by certified mail with a return receipt requested, or with the agreement of the garnishee, by electronic means. The notice must contain all of the following information:

(1) The claimant's name.
(2) The claimant's social security number or federal identification number.
(3) The amount of fraudulent overpaid benefits the claimant owes.
(4) An explanation of the liability of a garnishee for fraudulent overpayment of unemployment insurance benefits owed by an overpaid claimant.
(5) An explanation of the garnishee's responsibility concerning the notice.

(d) Action. – A garnishee must comply with a notice of garnishment or file a written response to the notice within the time set in this subsection. A garnishee that is a financial institution must comply or file a response within 20 days after receiving a notice of garnishment. All other garnishees must comply or file a response within 30 days after receiving a notice of garnishment. A written response must explain why the garnishee is not subject to garnishment and attachment.

Upon receipt of a written response, the Department must contact the garnishee and schedule a conference to discuss the response or inform the garnishee of the Department's position concerning the response. If the Department does not agree with the garnishee on the garnishee's liability, the Department may proceed to enforce the garnishee's liability for the fraudulent overpayment of unemployment benefits by civil action.

(e) Release. – A notice of garnishment sent to a financial institution is released when the financial institution complies with the notice. A notice of garnishment sent to all other garnishees is released when the Department sends the garnishee a notice of release. A notice of release must state the name and social security number or federal identification number of the taxpayer to whom the release applies.

"**§ 96-19.92. Enforcement of Employment Security Law discontinued upon repeal or invalidation of federal acts; suspension of enforcement provisions contested.**

(a) It is the purpose of this Chapter to secure for employers and employees the benefits of Title III and Title IX of the Federal Social Security Act, approved August 14, 1935, as to credit on payment of federal taxes, of State contributions, the receipt of federal grants for administrative purposes, and all other provisions of the said Federal Social Security Act; and it is intended as a policy of the State that this Chapter and its requirements for contributions by employers shall continue in force only so long as such employers are required to pay the federal taxes imposed in said Federal Social Security Act by a valid act of Congress. Therefore, if Title III and Title IX of the said Federal Social Security Act shall be declared invalid by the United States Supreme Court, or if such law be repealed by congressional action so that the federal tax cannot be further levied, from and after the declaration of such invalidity by the United States Supreme Court, or the repeal of said law by congressional action, as the case may be, no further levy or collection of contributions shall be made hereunder. The enactment by the Congress of the United States of the Railroad Retirement Act and the Railroad Unemployment Insurance Act shall in no way affect the administration of this law except as herein expressly provided.

All federal grants and all contributions theretofore collected, and all funds in the treasury by virtue of this Chapter, shall, nevertheless, be disbursed and expended, as far

as may be possible, under the terms of this Chapter: Provided, however, that contributions already due from any employer shall be collected and paid into the said fund, subject to such distribution; and provided further, that the personnel of the Division of Employment Security shall be reduced as rapidly as possible.

The funds remaining available for use by the Division of Employment Security shall be expended, as necessary, in making payment of all such awards as have been made and are fully approved at the date aforesaid, and the payment of the necessary costs for the further administration of this Chapter, and the final settlement of all affairs connected with same. After complete payment of all administrative costs and full payment of all awards made as aforesaid, any and all moneys remaining to the credit of any employer shall be refunded to such employer, or his duly authorized assignee: Provided, that the State employment service, created by Chapter 106, Public Laws of 1935, and transferred by Chapter 1, Public Laws of 1936, Extra Session, and made a part of the former Employment Security Commission of North Carolina, and that is now part of the Division of Employment Security of the North Carolina Department of Commerce, shall in such event return to and have the same status as it had prior to enactment of Chapter 1, Public Laws of 1936, Extra Session, and under authority of Chapter 106, Public Laws of 1935, shall carry on the duties therein prescribed; but, pending a final settlement of the affairs of the Division, the said State employment service shall render such service in connection therewith as shall be demanded or required under the provisions of this Chapter or the provisions of Chapter 1, Public Laws of 1936, Extra Session.

(b) The Division of Employment Security may, upon receiving notification from the U.S. Department of Labor that any provision of this Chapter is out of conformity with the requirements of the federal law or of the U.S. Department of Labor, suspend the enforcement of the contested section or provision until the North Carolina Legislature next has an opportunity to make changes in the North Carolina law. The Division shall, in order to implement the above suspension:

(1) Notify the Governor's office and provide that office with a copy of the determination or notification of the U.S. Department of Labor;

(2) Advise the Governor's office as to whether the contested portion or provision of the law would, if not enforced, so seriously hamper the operations of the agency as to make it advisable that a special session of the legislature be called;

(3) Take all reasonable steps available to obtain a reprieval from the implementation of any federal conformity failure sanctions until the State legislature has been afforded an opportunity to consider the existing conflict."

SECTION 5.(b) G.S. 96-19.30 and G.S. 96-19.31, as enacted by subsection (a) of this section, become effective January 1, 2014, and apply to taxable years beginning on or after that date. The remainder of subsection (a) of this section becomes effective July 1, 2013, and applies to claims for benefits filed on or after that date. The remainder of this section is effective when it becomes law.

SECTION 6.(a) G.S. 96-4 reads as rewritten:

"**§ 96-4. Administration; powers and duties of the Assistant Secretary; Board of Review.**

…

(b) Board of Review. – The Governor shall appoint a three-person Board of Review 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.~~Division of Employment Security. The Board of Review shall be comprised of one member representing employers, one member representing employees, and one member representing the general public. Members of the Board of Review are subject to confirmation by the General Assembly and shall serve four-year terms. The member appointed to represent the general public shall serve as chair of the Board of Review and shall be a licensed attorney. The annual salaries of the Board of Review shall be set by the General Assembly in the current Operations Appropriations Act. The Board of Review shall exercise its decision-making processes independent of the Governor, the General Assembly, the Department of Commerce, and the Division of Employment Security.

…

(i) Records and Reports. –

(1) Each employing unit shall keep true and accurate employment records, containing such information as the Division may prescribe. The records shall be open to inspection and be subject to being copied by the Division or its authorized representatives at any reasonable time and as often as may be necessary. Any employing unit doing business in North Carolina shall make available in this State to the Division, such information with respect to persons, firms, or other employing units performing services for it which the Secretary deems necessary in connection with the administration of this Chapter. The Division may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the Secretary deems necessary for the effective administration of this ~~Chapter.~~Chapter, including the employer's quarterly tax and wage report containing the name, social security number, and gross wages of persons employed during that quarter.

(2) If the Division finds that any employer has failed to file any report or return required by this Chapter or any regulation made pursuant hereto, or has filed a report which the Division finds incorrect or insufficient, the Division may make an estimate of the information required from such employer on the basis of the best evidence reasonably available to it at the time, and make, upon the basis of such estimate, a report or return on behalf of such employer, and the report or return so made shall be deemed to be prima facie correct, and the Division may make an assessment based upon such report and proceed to collect contributions due thereon in the manner as set forth in G.S. 96-10(b) of this Chapter: Provided, however, that no such report or return shall be made until the

employer has first been given at least 10 days' notice by registered mail to the last known address of such employer: Provided further, that no such report or return shall be used as a basis in determining whether such employing unit is an employer within the meaning of this Chapter.

…

(q) The ~~Division~~ Board of Review after due notice shall have the right and power to hold and conduct hearings for the purpose of determining the rights, status and liabilities of any "employing unit" or "employer" as said terms are defined ~~by G.S. 96-8(4) and 96-8(5) and subdivisions thereunder.~~ in Article 2A of this Chapter. The ~~Division~~ Board of Review shall have the power and authority to determine any and all questions and issues of fact or questions of law that may arise under the Employment Security Law that may affect the rights, liabilities and status of any employing unit or employer as heretofore defined by the Employment Security Law including the right to determine the amount of contributions, if any, which may be due the Division of Employment Security by any employer. Hearings may be before the Board of Review ~~or the Division~~ and shall be held in the central office of the ~~Division~~ Board of Review or at any other designated place within the State. They shall be open to the public and shall consist of a review of the evidence taken by a hearing officer designated by the Board of Review and a determination of the law applicable to that evidence. The ~~Division~~ Board of Review shall provide for the taking of evidence by a hearing ~~officer.~~ officer employed in the capacity of an attorney by the Department of Commerce. Such hearing officer shall have the same power to issue subpoenas, administer oaths, conduct hearings and take evidence as is possessed by the ~~Division~~ Board and such hearings shall be recorded, and he shall transmit all testimony and records of such hearings to the Board of Review ~~or Division~~ for its determination. All such hearings conducted by such hearing officer shall be scheduled and held in any county in this State in which the employing unit or employer either resides, maintains a place of business, or conducts business; however, the Board of Review ~~or Division~~ may require additional testimony at any hearings held by it at its office. From all decisions or determinations made by the ~~Assistant Secretary or the~~ Board of Review, any party affected thereby shall be entitled to an appeal to the superior court. Before a party shall be allowed to appeal, the party shall within 10 days after notice of such decision or determination, file with the Board of Review exceptions to the decision or the determination, which exceptions will state the grounds of objection to the decision or determination. If any one of the exceptions shall be overruled then the party may appeal from the order overruling the exceptions, and shall, within 10 days after the decision overruling the exceptions, give notice of ~~his~~ its appeal. When an exception is made to the facts as found by the Board of Review, the appeal shall be to the superior court in term time but the decision or determination of the ~~Division~~ Board of Review upon such review in the superior court shall be conclusive and binding as to all questions of fact supported by any competent evidence. When an exception is made to any rulings of law, as determined by the Board of Review, the appeal shall be to the judge of the superior court at chambers. The party appealing shall, within 10 days after the notice of appeal has been served, file with the Board of Review exceptions to the decision or determination overruling the exception which statement shall assign the errors

complained of and the grounds of the appeal. Upon the filing of such statement the Board of Review shall, within 30 days, transmit all the papers and evidence considered by it, together with the assignments of errors filed by the appellant to a judge of the superior court holding court or residing in some district in which such appellant either resides, maintains a place of business or conducts business, or, unless the appellant objects after being given reasonable opportunity to object, to a judge of the Superior Court of Wake County: Provided, however, the 30-day period specified herein may be extended by agreement of parties.

(r) The cause shall be entitled "State of North Carolina on Relationship of the ~~Division of Employment Security,~~Board of Review, Department of Commerce, of North Carolina against (here insert name of appellant)," and if there are exceptions to any facts found by the Board of Review, it shall be placed on the civil issue docket of such court and shall have precedence over other civil actions except those described in G.S. 96-10(b), and such cause shall be tried under such rules and regulations as are prescribed for the trial of other civil causes. By consent of all parties the appeal may be held and determined at chambers before any judge of a district in which the appellant either resides, maintains a place of business or conducts business, or said appeal may be heard before any judge holding court therein, or in any district in which the appellant either resides, maintains a place of business or conducts business. Either party may appeal to the appellate division from the judgment of the superior court under the same rules and regulations as are prescribed by law for appeals, except that if an appeal shall be taken on behalf of the Department of Commerce, it shall not be required to give any undertaking or make any deposit to secure the cost of such appeal and such court may advance the cause on its docket so as to give the same a speedy hearing.

(s) The decision or determination of the ~~Division~~ Board of Review when docketed in the office of the clerk of the superior court of any county and when properly indexed and cross-indexed shall have the same force and effect as a judgment rendered by the superior court, and if it shall be adjudged in the decision or determination of the ~~Division~~ Board of Review that any employer is indebted to the Division of Employment Security for contributions, penalties and interest or either of the same, then said judgment shall constitute a lien upon any realty owned by said employer in the county only from the date of docketing of such decision or determination in the office of the clerk of the superior court and upon personalty owned by said employer in said county only from the date of levy on such personalty, and upon the execution thereon no homestead or personal property exemptions shall be allowed; provided, that nothing herein shall affect any rights accruing to the Division of Employment Security under G.S. 96-10. The provisions of this section, however, shall not have the effect of releasing any liens for contributions, penalties or interest, or either of the same, imposed by other law, nor shall they have the effect of postponing the payment of said contributions, penalties or interest, or depriving the Division of Employment Security of any priority in order of payment provided in any other statute under which payment of the said contributions, penalties and interest or either of the same may be required. The superior court or any appellate court shall have full power and authority to issue any and all executions, orders, decrees, or writs that may be necessary to carry out the terms of said decision or determination of the Division or to

collect any amount of contribution, penalty or interest adjudged to be due the Division by said decision or determination. In case of an appeal from any decision or determination of the Division to the superior court or from any judgment of the superior court to the appellate division all proceedings to enforce said judgment, decision, or determination shall be stayed until final determination of such appeal but no proceedings for the collection of any amount of contribution, penalty or interest due on same shall be suspended or stayed unless the employer or party adjudged to pay the same shall file with the clerk of the superior court a bond in such amount not exceeding double the amount of contribution, penalty, interest or amount due and with such sureties as the clerk of the superior court deems necessary conditioned upon the payment of the contribution, penalty, interest or amount due when the appeal shall be finally decided or terminated.

…."

SECTION 6.(b) This section is effective when it becomes law.

SECTION 7.(a) Committee Established. – There is created the Joint Legislative Oversight Committee on Unemployment Insurance. The Committee consists of four members of the House of Representatives appointed by the Speaker of the House of Representatives and four members of the Senate appointed by the President Pro Tempore of the Senate.

The Speaker of the House of Representatives shall designate one Representative as cochair, and the President Pro Tempore of the Senate shall designate one Senator as cochair. Vacancies on the Committee shall be filled by the same appointing authority making the initial appointment.

The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may meet at any time upon the joint call of the cochairs. The Committee may meet in the Legislative Building or the Legislative Office Building. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 7.(b) Duties. – The Committee is directed to study and review all unemployment insurance matters, workforce development programs, and reemployment assistance efforts of the State. The following duties and powers, which are enumerated by way of illustration, shall be liberally construed to provide maximum review by the Committee of these matters:

(1) Study the unemployment insurance laws of North Carolina and the administration of those laws.

(2) Review the State's unemployment insurance laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, and easy to administer.

(3) Monitor the payment of the debt owed by the Unemployment Trust Fund to the federal government.

(4) Review and determine the adequacy of the balances in the Unemployment Trust Fund and the Employment Security Reserve Fund.

(5) Study the workforce development programs and reemployment assistance efforts of the Division of Workforce Solutions of the Department of Commerce.

(6) Call upon the Department of Commerce to cooperate with it in the study of the unemployment insurance laws and the workforce development efforts of the State.

SECTION 7.(c) Report. – The Committee may report its findings and recommendations to any regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

SECTION 7.(d) This section is effective when it becomes law and expires July 1, 2023.

SECTION 8. Except as otherwise provided, this act is effective when it becomes law.

Outline of Bill Draft: 2013-RBx-5

Fund Changes	
Employment Security Reserve Fund	Restrict uses. Cap fund at $50 million or the amount of interest paid the previous year; excess transferred to UI Fund.
Worker Training Trust Fund & Training and Employment Account	Eliminate these accounts. Transfer any balance in these accounts to the UI Fund.
Special Employment Security Administration Fund	Appropriate $10 million of the $16 million balance to the UI Fund.
Financing Change	
SUTA Changes	Increase the minimum and maximum contribution rate by .06. Move to a formula, as opposed to tax tables.
20% surcharge	Trigger "off" surcharge when UI Fund equals or exceeds $1 billion. Does not apply to reimbursing employers.
Reimbursable Entities	Require governmental employers that choose to reimburse benefits paid to maintain a 1% reserve. Treat all nonprofits the same: require 1% reserve if choose to reimburse; remove options of surety bond and other special payments.
Benefit Changes	
Benefits Duration	Reduce maximum duration of benefits from 13 to 26 weeks to 13 to 20 weeks. This range would vary based on total unemployment. With 5.5% unemployment or less, the range would be 5 to 12 weeks.
Calculation of WBA	Base on average of last two quarters worked, rather than high quarter.
Maximum WBA	Statutorily set amount of $350, rather than formula (current amount is $535).
Program Changes	
Partial weekly benefit	Disregard 20% of WBA, rather than 10% of AWW in highest quarter of base period.
Waiting week	Require waiting week for all new claims. Remove all waivers of the waiting week.
Extended base period	Repeal.
Extended benefit triggers	Retain the two OPTIONAL triggers but only when 100% federally funded.
Attached claims	Must have positive-credit balance. Reimburse. Limited to one time per employee for no more than 6 weeks.
Disqualification	Disqualification based on each application for UI.
Substantial fault and good cause provisions	Retain domestic violence and spousal relocation due to military reassignment. Eliminate substantial fault. Eliminate most other good cause provisions, unless federally required.
Suitable work	Define suitable work as any work after 10 weeks of UI benefits.

LEGISLATIVE PROPOSAL #2

REVENUE LAWS TECHNICAL, CLARIFYING, AND ADMINISTRATIVE 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 TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

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 2013

H **D**

HOUSE DRH10003-SVxz-3* (11/26)

Short Title:	Rev Laws Technical, Clarifying, & Admin. Chg.	(Public)
Sponsors:	Representative Howard.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES, AS RECOMMENDED BY THE REVENUE LAWS STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 105-116(b) reads as rewritten:

"(b) ~~Report~~ Return and Payment. – The tax imposed by this section is payable quarterly or monthly as specified in this subsection. A return is due quarterly.

A water company or public sewerage company must pay tax quarterly when filing a return. An electric power company must pay tax in accordance with the schedule and requirements that apply to payments of sales and use tax under G.S. 105-164.16 and must file a return quarterly.

A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return. A taxpayer must submit a return on a form provided by the Secretary. The return must include the taxpayer's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section. A taxpayer must report its gross receipts on an accrual basis. A return must contain the following information:

(1) The taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.

(2) The taxpayer's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under Chapter 159B of the General Statutes or a city having an ownership share in a project established under that Chapter.

(3) The amount of and price paid by the taxpayer for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.

(4) For an electric power company the entity's gross receipts from the sale within each city of the commodities and services described in subsection (a)."

SECTION 1.(b) G.S. 105-120.2 reads as rewritten:

"**§ 105-120.2. Franchise or privilege tax on holding companies.**

(a) Every corporation, domestic and foreign, incorporated or, by an act, domesticated under the laws of this State or doing business in this State ~~which,~~ that, at the close of its taxable ~~year~~ year, is a holding company as defined in subsection (c) of this section, shall, pursuant to the provisions of G.S. ~~105-122:~~105-122, do all of the following:

(1) ~~Make a report and statement, and~~File a return.

(2) Determine the total amount of its issued and outstanding capital stock, surplus and undivided ~~profits, and~~profits.

(3) Apportion such outstanding capital stock, surplus and undivided profits to this State.

(b) (1) Every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the ~~report and statement are~~ return is due, a franchise or privilege ~~tax, which is hereby levied,~~ tax at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the amount determined under subsection (a) of this section, but in no case shall the tax be more than seventy-five thousand dollars ($75,000) nor less than thirty-five dollars ($35.00).

(2) Notwithstanding the provisions of subdivision (1) of this subsection, if the tax produced pursuant to application of this paragraph (2) exceeds the tax produced pursuant to application of subdivision (1), then the tax ~~shall be~~ is levied at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) on the greater of the ~~amounts of~~following:

a. Fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as computed under G.S. ~~105-122(d); or~~105-122(d).

b. The total actual investment in tangible property in this State of such corporation as computed under G.S. 105-122(d).

…."

SECTION 1.(c) G.S. 105-122 reads as rewritten:

"**§ 105-122. Franchise or privilege tax on domestic and foreign corporations.**

…

(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount shall not be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each corporation nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the ~~report and statement are~~ return is due, a franchise or privilege tax at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as provided in this section. The tax imposed in this section shall not be less than thirty-five dollars ($35.00) and ~~shall be~~ is for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each corporation in this State. Appraised value of tangible property including real estate is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. The term "total actual investment in tangible property" as used in this section means the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" ~~there shall also be deducted~~ a corporation may deduct reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming this deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that the device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to the devices, plants or equipment, that the device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose is to reduce air or water pollution resulting from the emission of air contaminants or the

discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas is treated as deductible for the purposes of this section; the deductible liability allowed by this section ~~shall apply~~ applies only with respect to pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

…

(f) The ~~report, statement~~ return and tax required by this section ~~shall be~~ is in addition to all other reports required or taxes levied and assessed in this State.

…."

SECTION 1.(d) G.S. 105-127(a) reads as rewritten:

"(a) Every corporation, domestic or foreign, that is required to file a return with the Secretary ~~from which a report is required by law to be made to the Secretary of Revenue,~~ shall, unless otherwise provided, pay annually ~~to said Secretary annually~~ the franchise tax as required by G.S. 105-122."

SECTION 1.(e) G.S. 105-134.2(b) reads as rewritten:

"(b) In lieu of the tax imposed by subsection (a) of this section, there is imposed for each taxable year upon the North Carolina taxable income of every individual a tax determined under tables, applicable to the taxable year, which may be prescribed by the Secretary. The amounts of the tax determined under the tables shall be computed on the basis of the rates prescribed by subsection (a) of this section. This subsection does not apply to an individual ~~making~~ filing a return under section 443(a)(1) of the Code for a period of less than 12 months on account of a change in the individual's annual accounting period, or to an estate or trust. The tax imposed by this subsection shall be treated as the tax imposed by subsection (a) of this section."

SECTION 1.(f) G.S. 105-164.19 reads as rewritten:

"**§ 105-164.19. Extension of time for making returns and payment.**

The Secretary for good cause may extend the time for ~~making~~ filing any return under the provisions of this Article and may grant ~~such~~ additional time within which to ~~make such~~ file the return as he may deem ~~proper~~ proper, but the time for filing any ~~such~~ return shall not be extended for more than 30 days after the regular due date of ~~such~~ the return. If the time for filing a return ~~be~~ is extended, interest accrues at the rate established pursuant to G.S. 105-241.21 from the time the return was due to be filed to the date of payment.~~payment shall be added and paid.~~"

SECTION 1.(g) G.S. 105-164.30 reads as rewritten:

"**§ 105-164.30. Secretary or agent may examine books, etc.**

For the purpose of enforcing the collection of the tax levied by this Article, the Secretary or his duly authorized agent is ~~hereby specifically~~ authorized ~~and empowered~~ to examine at all reasonable hours during the day the books, papers, records, documents or other data of all retailers or wholesale merchants bearing upon the correctness of any return or for the purpose of ~~making~~ filing a return where none has been made as required

by this Article, and may require the attendance of any person and take his testimony with respect to any such matter, with power to administer oaths to such person or persons. If any person summoned as a witness ~~shall fail~~ fails to obey any summons to appear before the Secretary or his authorized agent, or ~~shall refuse~~ refuses to testify or answer any material question or to produce any book, record, paper, or other data when required to do so, ~~such~~ the Secretary or his authorized agent shall report the failure or refusal ~~shall be reported~~ to the Attorney General or the district solicitor, who shall thereupon institute proceedings in the superior court of the county where ~~such~~ the witness resides to compel obedience to any summons of the Secretary or his authorized agent. Officers who serve summonses or subpoenas, and witnesses attending, shall receive like compensation as officers and witnesses in the superior courts, to be paid from the proper appropriation for the administration of this Article.

In the event any retailer or wholesale merchant ~~shall fail or refuse~~ fails or refuses to permit ~~examination of~~ the Secretary or his authorized agent to examine his books, papers, accounts, records, documents or other ~~data by the Secretary or his authorized agents as aforesaid,~~ data, the Secretary ~~shall have the power to proceed by citing said~~ may require the retailer or wholesale merchant to show cause before the superior court of the county in which said taxpayer resides or has its principal place of business as to why ~~such~~ the books, records, papers, or documents should not be examined and ~~said~~ the superior court shall have jurisdiction to enter an order requiring the production of all necessary books, records, papers, or documents and to punish for contempt any person who violates the order. ~~of such order any person violating the same.~~"

SECTION 1.(h) G.S. 105-236(a)(9) reads as rewritten:

"(9) Willful Failure to File Return, Supply Information, or Pay Tax. – Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, ~~make~~ file the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, ~~shall,~~ is, in addition to other penalties provided by law, ~~be~~ guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision ~~shall be~~ is barred before the expiration of six years after the date of the violation."

SECTION 1.(i) G.S. 105-258(a) reads as rewritten:

"(a) Secretary May Examine Data and Summon Persons. – The Secretary of ~~Revenue,~~Revenue is authorized to do any of the following for the purpose of ascertaining the correctness of any return, ~~making~~ filing a return where none has been made, or determining the liability of any person for a tax, or collecting any tax:~~such tax, shall have the power~~

(1) ~~to examine,~~ Examine, personally, or by an agent designated by him, any books, papers, records, or other data ~~which~~ that may be relevant or material to ~~such inquiry, and the Secretary may~~ the inquiry.

(2) ~~summon~~ Summon any of the following persons to appear at a time and place named in the summons, to produce such books, papers, records or other data, and to give such testimony under oath as may be relevant or material to the inquiry:

a. ~~the~~ Any person liable for the tax or required to perform the act, or any officer or employee of such ~~person, or any~~ person.

b. Any person having possession, custody, care or control of books of account containing entries relevant or material to the income and expenditures of the person liable for the tax or required to perform the act, or any other person having knowledge in the premises.~~premises, to appear before the Secretary, or his agent, at a time and place named in the summons, and to produce such books, papers, records or other data, and to give such testimony under oath as may be relevant or material to such inquiry, and the Secretary or his agent may~~

(3) ~~administer~~ Administer oaths to ~~such person or persons.~~ the persons listed in this subsection.

(4) ~~If any person so summoned refuses to obey such summons or to give testimony when summoned, the Secretary may apply~~ Apply to the Superior Court of Wake County for an order requiring ~~such person or persons to comply with the summons of the Secretary, and the failure~~any person who refuses to obey the summons or to give testimony when summoned. Failure to comply with ~~such~~ the court order shall be punished as for contempt."

SECTION 2.(a) G.S. 105-122(c1) reads as rewritten:

"(c1) Apportionment. – A corporation that is doing business in this State and in one or more other states must apportion its capital stock, surplus, and undivided profits to this State. A corporation must use the apportionment method set out in subdivision (1) of this subsection unless the Department has authorized it to use a different method under subdivision (2) of this subsection. The portion of a corporation's capital stock, surplus, and undivided profits determined by applying the appropriate apportionment method is considered the amount of capital stock, surplus, and undivided profits the corporation uses in its business in this State.

…

(2) Alternative. – A corporation that believes the statutory apportionment method set out in subdivision (1) of this subsection subjects a greater portion of its capital stock, surplus, and undivided profits to tax under this section than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method. The corporation has the burden of

establishing by clear, cogent, and convincing proof that the statutory apportionment method subjects a greater portion of the corporation's capital stock, surplus, and undivided profits to tax under this section than is attributable to its business in this State and that the proposed alternative method is a better method of determining the amount of the corporation's capital stock, surplus, and undivided profits attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax ~~years, unless the provisions of subdivision (3) of this subsection applies.~~ years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subdivision. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its capital stock, surplus, and undivided profits in accordance with the alternative method or the statutory method."

SECTION 2.(b) G.S. 105-130.4(t1) reads as rewritten:

"(t1) Alternative Apportionment Method. – A corporation that believes the statutory apportionment method that otherwise applies to it under this section subjects a greater portion of its income to tax than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method.

The statutory apportionment method that otherwise applies to a corporation under this section is presumed to be the best method of determining the portion of the corporation's income that is attributable to its business in this State. A corporation has the burden of establishing by clear, cogent, and convincing proof that the proposed alternative method is a better method of determining the amount of the corporation's income attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax ~~years, unless the provisions of subsection (t2) of this section apply.~~ years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subsection. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its income in

accordance with the alternative method or the statutory method. A corporation may not use an alternative apportionment method except upon written order of the Secretary, and any return in which any alternative apportionment method, other than the method prescribed by statute, is used without permission of the Secretary is not a lawful return."

SECTION 3. G.S. 105-163.41(c) reads as rewritten:

"(c) The period of the underpayment ~~shall run~~runs from the date the installment was required to be paid to the earlier of:

(1) The 15th day of the ~~3rd~~ 4th month following the close of the taxable year, or

(2) With respect to any portion of the underpayment, the date on which the portion is paid. An installment payment of estimated tax ~~shall be~~ is considered a payment of any previous underpayment only to the extent the payment exceeds the amount of the installment determined under subdivision (1) of subsection (b) for that installment date."

SECTION 4. G.S. 105-129.84(c) reads as rewritten:

"(c) Carryforward. – Unless a longer carryforward period applies, any unused portion of a credit allowed under G.S. 105-129.87 or G.S. 105-129.88 may be carried forward for the succeeding five years, and any unused portion of a credit allowed under G.S. 105-129.89 may be carried forward for the succeeding 15 years. If the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of business and real property, any unused portion of a credit under this Article with respect to the establishment that satisfies that condition may be carried forward for the succeeding 20 years. If the taxpayer does not make the required level of investment, the taxpayer shall apply the ~~five year~~ standard carryforward period rather than the 20-year carryforward period."

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

"**§ 105-134.6. Modifications to adjusted gross income.**

…

(b) Other Deductions. – In calculating North Carolina taxable income, a taxpayer may deduct any of the following items to the extent those items are included in the taxpayer's adjusted gross income.

…

(17b) An amount equal to twenty percent (20%) of the amount added ~~to federal taxable income as accelerated depreciation~~ under subdivision (c)(8b) of this section. For the amount added to taxable income in the 2010 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2011. For the amount added to taxable income in the 2011 taxable year, the deduction allowed by this subdivision applies to the first five taxable years

beginning on or after January 1, 2012. For the amount added to ~~taxable~~ adjusted gross income in the 2012 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2013.

…

(d) Other Adjustments. – In calculating North Carolina taxable income, a taxpayer must make the following adjustments to adjusted gross income.

(1) The amount of inheritance or estate tax attributable to an item of income in respect of a decedent required to be included in gross income under the Code, adjusted as provided in G.S. ~~105-134.5,~~ 105-134.5 and 105-134.6, ~~and 105-134.7,~~ may be deducted in the year the item of income is included. The amount of inheritance or estate tax attributable to an item of income in respect of a decedent is (i) the amount by which the inheritance or estate tax paid under Article 1 or 1A of this Chapter on property transferred to a beneficiary by a decedent exceeds the amount of the tax that would have been payable by the beneficiary if the item of income in respect of a decedent had not been included in the property transferred to the beneficiary by the decedent, (ii) multiplied by a fraction, the numerator of which is the amount required to be included in gross income for the taxable year under the Code, adjusted as provided in G.S. ~~105-134.5,~~ 105-134.5 and 105-134.6, ~~and 105-134.7,~~ and the denominator of which is the total amount of income in respect of a decedent transferred to the beneficiary by the decedent. For an estate or trust, the deduction allowed by this subdivision shall be computed by excluding from the gross income of the estate or trust the portion, if any, of the items of income in respect of a decedent that are properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

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

…

(3) The taxpayer shall add to ~~taxable~~ adjusted gross income the amount of any recovery during the taxable year not included in ~~taxable~~ adjusted gross income, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by this Part but, due to differences between the Code and this Part, did not reduce the amount of the taxpayer's tax imposed by the Code. The taxpayer may deduct from ~~taxable~~ adjusted gross income the amount of any recovery during the taxable year included in ~~taxable~~ adjusted gross

income under section 111 of the Code, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by the Code but, due to differences between the Code and this Part, did not reduce the amount of the taxpayer's tax imposed by this Part.

(4) A taxpayer may deduct from ~~taxable~~ adjusted gross income the amount, not to exceed two thousand five hundred dollars ($2,500), contributed to an account in the Parental Savings Trust Fund of the State Education Assistance Authority established pursuant to G.S. 116-209.25. In the case of a married couple filing a joint return, the maximum dollar amount of the deduction is five thousand dollars ($5,000).

(5) The taxpayer shall add to ~~taxable~~ adjusted gross income the amount deducted ~~from taxable income~~ in a prior taxable year under subdivision (4) of this subsection to the extent this amount was withdrawn from the Parental Savings Trust Fund of the State Education Assistance Authority established pursuant to G.S. 116-209.25 and not used to pay for the qualified higher education expenses of the designated beneficiary, unless the withdrawal was made without penalty under section 529 of the Code due to the death or permanent disability of the designated beneficiary.

(6) A taxpayer who is an eligible firefighter or an eligible rescue squad worker may deduct from ~~taxable~~ adjusted gross income the sum of two hundred fifty dollars ($250.00). In the case of a married couple filing a joint return, each spouse may qualify separately for the deduction allowed under this subdivision. In order to claim the deduction allowed under this subdivision, the taxpayer must submit with the tax return any documentation required by the Secretary. An individual may not claim a deduction as both an eligible firefighter and as an eligible rescue squad worker in a single taxable year. The following definitions apply in this subdivision:

a. Eligible firefighter. – An unpaid member of a volunteer fire department who attended at least 36 hours of fire department drills and meetings during the taxable year.

b. Eligible rescue squad worker. – An unpaid member of a volunteer rescue or emergency medical services squad who attended at least 36 hours of rescue squad training and meetings during the taxable year.

…."

SECTION 5.(b) G.S. 105-151(a) reads as rewritten:

"(a) An individual who is a resident of this State is allowed a credit against the taxes imposed by this Part for income taxes imposed by and paid to another state or country on income taxed under this Part, subject to the following conditions:

…

(2) The fraction of the gross income, as calculated under the Code and adjusted as provided in G.S. ~~105-134.6 and G.S. 105-134.7,~~ 105-134.6, that is subject to income tax in another state or country shall be ascertained, and the North Carolina net income tax before credit under this section shall be multiplied by that fraction. The credit allowed is either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

…."

SECTION 5.(c) G.S. 105-151.11(c) reads as rewritten:

"(c) Limitations. – A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. No credit shall be allowed under this section for amounts deducted ~~from gross income~~ in calculating North Carolina taxable ~~income under the Code.~~ income. The credit allowed by this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except for payments of tax made by or on behalf of the taxpayer."

SECTION 5.(d) G.S. 105-151.30(e) reads as rewritten:

"(e) No Double Benefit. – A taxpayer who claims a credit under this section must add back to ~~taxable~~ adjusted gross income any amount deducted under G.S. 105-134.6(a2)~~the Code~~ for the donation of the oyster shells."

SECTION 5.(e) G.S. 105-152 reads as rewritten:

"**§ 105-152. Income tax returns.**

…

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

(d) Secretary May Require Additional Information. – When the Secretary has reason to believe that any taxpayer conducts a trade or business in a way that directly or indirectly distorts the taxpayer's ~~taxable~~ adjusted gross income or North Carolina taxable income, the Secretary may require any additional information for the proper computation of the taxpayer's ~~taxable~~ adjusted gross income and North Carolina taxable income. In computing the taxpayer's ~~taxable~~ adjusted gross income and North Carolina taxable

income, the Secretary shall consider the fair profit that would normally arise from the conduct of the trade or business.

…."

SECTION 5.(f) G.S. 105-160.1 reads as rewritten:

"**§ 105-160.1. Definitions.**

The definitions provided in Part 2 of this Article shall apply in this Part except where the context clearly indicates a different meaning. In addition, as used in this Part, "taxable income" is defined in section 63 of the Code."

SECTION 5.(g) G.S. 105-160.2 reads as rewritten:

"**§ 105-160.2. Imposition of tax.**

The tax imposed by this Part ~~shall apply~~ applies to the taxable income of estates and trusts as determined under the provisions of the Code except as otherwise provided in this Part. The taxable income of an estate or trust ~~shall be~~ is the same as taxable income for such an estate or trust under the provisions of the Code, adjusted as provided in G.S. ~~105-134.6 and G.S. 105-134.7,~~ 105-134.6, except that the adjustments provided in G.S. 105-134.6 ~~and G.S. 105-134.7 shall be~~ are apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. The tax ~~shall be~~ is computed on the amount of the taxable income of the estate or trust that is for the benefit of a resident of this State, or for the benefit of a nonresident to the extent that the income (i) is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or (ii) is derived from a business, trade, profession, or occupation carried on in this State. For purposes of the preceding sentence, taxable income and gross income ~~shall be~~ is computed subject to the adjustments provided in G.S. ~~105-134.6 and G.S. 105-134.7.~~105-134.6. The tax on the amount computed above ~~shall be~~ is at the rates levied in G.S. 105-134.2(a)(3). The fiduciary responsible for administering the estate or trust shall pay the~~The~~ tax computed under the provisions of this ~~Part shall be paid by the fiduciary responsible for administering the estate or trust.~~Part."

SECTION 6.(a) The first sentence of G.S. 105-134.7(a)(3) is recodified as G.S. 105-134.6(c)(17).

SECTION 6.(b) G.S. 105-134.7(a)(6) is recodified as G.S. 105-134.6(c)(18) and reads as rewritten:

"(18) A loss or deduction that was incurred or paid and deducted from State taxable income in a taxable year beginning before January 1, 1989, and is carried forward and deducted in a taxable year beginning on or after January 1, 1989, under the ~~Code shall be added to taxable income.~~Code."

SECTION 6.(c) The second sentence of G.S. 105-134.7(a)(3) is recodified as G.S. 105-134.6(b)(24).

SECTION 6.(d) G.S. 134.7(a)(7) is recodified as G.S. 105-134.6(d)(9).

SECTION 6.(e) G.S. 134.7(b) is recodified as G.S. 105-134.6(d)(10).

SECTION 6.(f) The remainder of G.S. 105-134.7 is repealed.

SECTION 7. G.S. 105-151.18 reads as rewritten:

"**§ 105-151.18. Credit for the disabled.**

(a) Disabled Taxpayer. – A taxpayer who (i) is retired on disability, (ii) at the time of retirement, was permanently and totally disabled, and (iii) claims a federal income tax credit under section 22 of the Code for the taxable year, is allowed as a credit against the tax imposed by this Part an amount equal to one-third of the amount of the federal income tax credit for which the taxpayer is eligible under section 22 of the Code.

(b) Disabled Dependent. – If a dependent or spouse for whom a taxpayer is allowed an exemption under the Code is permanently and totally disabled, the taxpayer is allowed a credit against the tax imposed by this Part. In order to claim the credit allowed by this subsection, the taxpayer must attach to the tax return on which the credit is claimed a statement from a physician or local health department certifying that the dependent or spouse for whom the credit is claimed is permanently and totally disabled, as defined in this section. The amount of the credit allowed ~~shall be~~ is determined as follows: For a taxpayer whose North Carolina ~~adjusted gross~~ taxable income does not exceed the appropriate income amount provided in the table below, based on the taxpayer's filing status, the credit allowed is the appropriate initial credit provided in the table below. For a taxpayer whose North Carolina ~~adjusted gross~~ taxable income does exceed the appropriate income amount, the credit allowed is the appropriate initial credit reduced by four dollars ($4.00) for every one thousand dollars ($1,000) by which the taxpayer's North Carolina ~~adjusted gross~~ taxable income exceeds the appropriate income amount.

Filing Status	**Initial Credit**	**Income Amount**
Head of Household	$64.00	$16,000
Surviving Spouse or Joint Return	$80.00	$20,000
Single	$48.00	$12,000
Married Filing Separately	$40.00	$10,000

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

(1) North Carolina ~~Adjusted Gross Income.~~ taxable income. – Defined in G.S. 105-134.5.~~Adjusted gross income, as determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7.~~

(2) Permanently and ~~Totally Disabled.~~ totally disabled. – Unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For the purpose of this section, a minor is permanently and totally disabled if the impact of the impairment on the minor's ability to function is equivalent in severity to

that which would make an adult unable to engage in any substantial gainful activity.

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

SECTION 8. G.S. 105-164.3 reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

…

(37b) School instructional material. – Written material commonly used by a student in a course of study as a reference and to learn the subject being taught. The following is an all-inclusive list:

a. Reference books.

b. Reference maps and globes.

c. Textbooks.

d. Workbooks.~~Defined in the Streamlined Agreement.~~

…

(44) Storage. – The keeping or retention in this State for any purpose, except sale in the regular course of business, of tangible personal property or digital property purchased from a retailer. The term does not include a purchaser's storage of tangible personal property or digital property in any of the following circumstances:

a. When the purchaser is able to document that at the time the purchaser acquires the property the property is designated for the purchaser's use outside the State and the purchaser subsequently takes it outside the State and uses it solely outside the State.

b. When the purchaser acquires the property to process, fabricate, manufacture, or otherwise incorporate it into or attach it to other property for the purchaser's use outside the State and, after incorporating or attaching the purchased property, the purchaser subsequently takes the other property outside the State and uses it solely outside the State.

…

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of ~~December 19, 2011.~~May 24, 2012.

…."

SECTION 9. G.S. 105-164.4(a)(3) reads as rewritten:

"(3) A tax at the general rate applies to the gross receipts derived from the rental of an accommodation. The tax does not apply to (i) a private residence or cottage that is rented for fewer than 15 days in a calendar year; (ii) an accommodation rented to the same person for a period of 90 or more continuous days; or (iii) an accommodation arranged or provided to a person by a school, camp, or similar entity where a tuition or fee is charged to the person for enrollment in the school, camp, or similar entity.

Gross receipts derived from the rental of an accommodation include the sales price of the rental of the accommodation. The sales price of the rental of an accommodation is determined as if the rental were a rental of tangible personal property. The sales price of the rental of an accommodation marketed by a facilitator includes charges designated as facilitation fees and any other charges necessary to complete the rental.

A person who provides an accommodation that is offered for rent is considered a retailer under this Article. A facilitator must report to the retailer with whom it has a contract the sales price a consumer pays to the facilitator for an accommodation rental marketed by the facilitator. A retailer must notify a facilitator when an accommodation rental marketed by the facilitator is completed ~~and, within three business days of receiving the notice,~~ and the facilitator must send the retailer the portion of the sales price the facilitator owes the retailer and the tax due on the sales ~~price.~~ price no later than 10 days after the end of each calendar month. A facilitator that does not send the retailer the tax due on the sales price is liable for the amount of tax the facilitator fails to send. A facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a facilitator. The requirements imposed by this subdivision on a retailer and a facilitator are considered terms of the contract between the retailer and the facilitator.

A person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax imposed by this subdivision. The liability of a rental agent for the tax imposed by this subdivision relieves the provider of the accommodation from liability. A rental agent includes a real estate broker, as defined in G.S. 93A-2.

The following definitions apply in this subdivision:

a. Accommodation. – A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.

b. Facilitator. – A person who is not a rental agent and who contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer for the accommodation."

SECTION 10. G.S. 105-164.6(c) reads as rewritten:

"(c) Credit. – A credit is allowed against the tax imposed by this section for the following:

(1) The amount of sales or use tax paid on the item to this ~~State.~~ State, provided the tax is stated and charged separately on the invoices or other documents of the retailer given to the purchaser at the time of the sale, except as otherwise provided in G.S. 105-164.7, or provided the retailer remitted the tax subsequent to the sale and the purchaser obtains such documentation. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.

(2) The amount of sales or use tax due and paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina."

SECTION 11. 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:

…

(33a) Tangible personal property sold by a retailer to a purchaser ~~within or without~~inside or outside this State, when the property is delivered by the retailer in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this State and the purchaser does not subsequently use the property in this State. This exemption includes printed material sold by a retailer to a purchaser inside or outside this State when the printed material is delivered directly to a mailing house, or to a common carrier, or to the United States Postal Service for delivery to a mailing house in this State that will preaddress and presort the material and deliver it to a

common carrier or to the United States Postal Service for delivery to recipients outside this State designated by the purchaser.

…

(43a) Computer software that meets any of the following descriptions:

a. It is ~~designed~~ purchased to run on an enterprise server operating system. The exemption includes a purchase or license of computer software for high-volume, simultaneous use on multiple computers, that is housed or maintained on an enterprise server or end users' computers. The exemption includes software designed to run a computer system, an operating program, or application software.

b. It is sold to a person who operates a datacenter and is used within the datacenter.

c. It is sold to a person who provides cable service, telecommunications service, or video programming and is used to provide ancillary service, cable service, Internet access service, telecommunications service, or video programming.

...."

SECTION 12. G.S. 105-164.14(b) reads as rewritten:

"(b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity is allowed a semiannual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity, telecommunications service, and ancillary service, for use in carrying on the work of the nonprofit entity. Sales and use tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the nonprofit entity. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15.

The refunds allowed under this subsection do not apply to an entity that is owned and controlled by the United States or to an entity that is owned or controlled by the State and is not listed in this subsection. A hospital that is not listed in this subsection is allowed a semiannual refund of sales and use taxes paid by it on ~~medicines and~~ over-the-counter drugs purchased for use in carrying out its work. The following nonprofit entities are allowed a refund under this subsection:

(1) Hospitals not operated for profit, including hospitals and medical accommodations operated by an authority or other public hospital described in Article 2 of Chapter 131E of the General Statutes.

(2) An organization that is exempt from income tax under section 501(c)(3) of the Code, other than an organization that is properly classified in any of the following major group areas of the National Taxonomy of Exempt Entities:

a. Community Improvement and Capacity Building.

b. Public and Societal Benefit.

c. Mutual and Membership Benefit.

(2a) An organization that is exempt from income tax under the Code and is one of the following:

a. A volunteer fire department.

b. A volunteer emergency medical services squad.

(2b) An organization that is a single member LLC that is disregarded for income tax purposes and satisfies all of the following conditions:

a. The owner of the LLC is an organization that is exempt from income tax under section 501(c)(3) of the Code.

b. The LLC is a nonprofit entity that would be eligible for an exemption under 501(c)(3) of the Code if it were not disregarded for income tax purposes.

c. The LLC is not an organization that would be properly classified in any of the major group areas of the National Taxonomy of Exempt Entities listed in subdivision (2) of this subsection."

SECTION 13. G.S. 105-164.27A(a) reads as rewritten:

"(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.~~sales of electricity or the gross receipts derived from rentals of accommodations.

A person who purchases an item for storage, use, or consumption 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 stored, used, or consumed 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 stored, used, or consumed is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable."

SECTION 14. G.S. 105-164.35 is repealed.

SECTION 15. G.S. 105-164.42L reads as rewritten:

"**§ 105-164.42L. ~~Databases on taxing jurisdictions.~~Liability relief for erroneous information or insufficient notice by Department.**

(a) The Secretary may develop databases that provide information on the boundaries of taxing jurisdictions and the tax rates applicable to those taxing jurisdictions. A person who relies on the information provided in these databases is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in those databases.

(b) The Secretary may develop a taxability matrix that provides information on the taxability of certain items. A person who relies on the information provided in the taxability matrix is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in the taxability matrix.

(c) A retailer is not liable for an underpayment of tax attributable to a rate change when the State fails to provide for at least 30 days between the enactment of the rate change and the effective date of the rate change if the conditions of this subsection are satisfied. However, if the State establishes the retailer fraudulently failed to collect at the new rate or solicited customers based on the immediately preceding effective rate this liability relief does not apply. Both of the following conditions must be satisfied for liability relief:

(1) The retailer collected tax at the immediately preceding rate.

(2) The retailer's failure to collect at the newly effective rate does not extend beyond 30 days after the date of enactment of the new rate."

SECTION 16. G.S. 105-187.51(a) reads as rewritten:

"(a) Scope. – A privilege tax is imposed on the following persons:

(1) A manufacturing ~~industry or~~ plant that purchases mill machinery or mill machinery parts or accessories for storage, use, or consumption in this ~~State.~~State to produce a product for sale. A manufacturing ~~industry or~~ plant does not include the following:

a. A delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of foods prepared by it for consumption on or off its premises.

b. A production company.

(2) A contractor or subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a manufacturing ~~industry or~~ plant.

(3) A subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a general contractor that has a contract with a manufacturing ~~industry or~~ plant."

SECTION 17. G.S. 105-187.52(b) reads as rewritten:

"(b) Credit. – A credit is allowed against the tax imposed by this Article for the amount of a sales or use tax, privilege or excise tax, or substantially equivalent tax due and paid to another ~~state.~~ state or for the amount of sales and use tax paid to this State.

The credit allowed by this subsection does not apply to tax paid to another state that does not grant a similar credit for the privilege tax paid in North Carolina."

SECTION 18. G.S. 105-236.1(a) reads as rewritten:

"(a) General. – The Secretary may appoint employees of the Unauthorized Substances Tax Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the excise tax on unauthorized substances imposed by Article 2D of this Chapter.

The Secretary may appoint up to 11 employees of the Motor Fuels ~~Tax~~ Investigations Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the taxes on motor fuels imposed by Articles 36B, 36C, and 36D of this Chapter and by Chapter 119 of the General Statutes.

The Secretary may appoint employees of the Criminal Investigations Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the following tax violations and criminal offenses:

(1) The felony and misdemeanor tax violations in G.S. 105-236.

(2) The misdemeanor tax violations in G.S. 105-449.117 and G.S. 105-449.120.

(3) The following criminal offenses when they involve a tax imposed under Chapter 105 of the General Statutes:

a. G.S. 14-91 (Embezzlement of State Property).

b. G.S. 14-92 (Embezzlement of Funds).

c. G.S. 14-100 (Obtaining Property By False Pretenses).

c1. G.S. 14-113.20 (Identity Theft).

c2. G.S. 14-133.20A (Trafficking in Stolen Identities).

d. G.S. 14-119 (Forgery).

e. G.S. 14-120 (Uttering Forged Paper).

f. G.S. 14-401.18 (Sale of Certain Packages of Cigarettes)."

SECTION 19. G.S. 105-242.2(b) reads as rewritten:

"(b) Responsible Person. – Each responsible person in a business entity is personally and individually liable for all of the taxes listed in this subsection. In each case, the term 'taxes' specifically includes any interest and penalties included in the assessment against the business entity that remain unpaid. If a business entity does not pay a tax it owes after the tax becomes collectible under G.S. 105-241.22, the Secretary may enforce the responsible person's liability for the tax by sending the responsible person a notice of proposed assessment in accordance with G.S. 105-241.9. The taxes for which a responsible person may be held personally and individually liable are:

(1) All sales and use taxes collected by the business entity upon its taxable transactions.

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

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

(4) All income taxes required to be withheld from the wages of employees of the business entity."

SECTION 20. G.S. 105-256(a)(9) is repealed.

SECTION 21. G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person except as provided in this subsection. Standards used or to be used for the selection of returns for examination and data used or to be used for determining the standards may not be disclosed for any purpose. All other tax information may be disclosed only if the disclosure is made for one of the following purposes:

…

(15a) To furnish to ~~the head of~~ the appropriate ~~State or~~ local, state, or federal law enforcement ~~agency~~ agency, including a prosecutorial agency, information concerning the commission of an offense under the jurisdiction of that agency ~~discovered by~~ when the Department ~~during~~ has initiated a criminal investigation of the taxpayer.

…

(29) To provide to the Economic Investment Committee established pursuant to G.S. ~~143B-437.48~~ 143B-437.54 information necessary to implement ~~Part 2F of Article 10 of Chapter 143B of the General Statutes.~~economic development programs under the responsibility of the Committee."

SECTION 22. Section 6A.3(d) of S.L. 2012-142 reads as rewritten:

"**SECTION 6A.3.(d)** Funding. – Of funds generated from increased revenues or cost savings as compared to the baselines established by subdivision (1) of subsection (c) of this section, in the General Fund, the Highway Fund, and that State portion of the Unauthorized Substance Tax collections of the Special Revenue Fund, the sum of up to a total of sixteen million dollars ($16,000,000) may be ~~used~~ authorized by the Office of State Budget and Management to make purchases related to the implementation of the additional public-private arrangement authorized by this section, including payment for services from non-State entities."

SECTION 23. G.S. 105-113.112 reads as rewritten:

"**§ 105-113.112. Confidentiality of information.**

(a) Information obtained by the Department in the course of administering the tax imposed by this Article, including information on whether the Department has issued a revenue stamp to a person, is confidential tax information and is subject to the ~~following restrictions on disclosure:~~

~~(1) G.S. 105-259 prohibits the disclosure of the information, except in the limited circumstances provided in that statute.~~

~~(2) The information~~ provisions of G.S. 105-259.

(b) Information obtained by the Department from the taxpayer in the course of administering the tax imposed by this Article, including information on whether the Department has issued a revenue stamp to a person, may not be used as evidence, as defined in G.S. 15A-971, by a prosecutor in a criminal prosecution of the taxpayer for an offense ~~other than an offense under this Article or under Article 9 of this Chapter.~~ related to the manufacturing, possession, transportation, distribution, or sale of the unauthorized substance. Under this prohibition, no officer, employee, or agent of the Department may testify about ~~the~~this information in a criminal prosecution of the taxpayer for an offense related to the manufacturing, possession, transportation, distribution, or sale of the unauthorized substance.~~other than an offense under this Article or under Article 9 of this Chapter.~~ This ~~subdivision~~ subsection implements the protections against double jeopardy and self-incrimination set out in Amendment V of the United States Constitution and the restrictions in it apply regardless of whether information may be disclosed under G.S. 105-259. ~~This subdivision does not apply to information obtained from a source other than an employee, officer, or agent of the Department. This subdivision does not prohibit testimony by an officer, employee, or agent of the Department concerning an offense committed against that individual in the course of administering this Article.~~ An officer, employee, or agent of the Department who provides evidence or testifies in violation of this subdivision is guilty of a Class 1 misdemeanor."

SECTION 24.(a) G.S. 105-113.4A reads as rewritten:

"**§ 105-113.4A. Licenses.**

(a) General. – To obtain a license required by this Article, an applicant must ~~apply to~~ file an application with the Secretary on a form provided by the Secretary and pay the tax due for the license. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary. A license is not transferable or assignable and must be displayed at the place of business for which it is issued.

(b) Requirements. – An applicant for a license must meet the following requirements:

(1) If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State.

(2) If the applicant for a license is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State.

(3) If the applicant for a license is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State.

(4) If the applicant for a license is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address.

(c) Denial. – The Secretary may investigate an applicant for a license required under this Article to determine if the information the applicant submits with the application is accurate and if the applicant is eligible to be licensed under this Article. The Secretary may refuse to issue a license to an applicant that has done any of the following:

(1) Submitted false or misleading information on its application.

(2) Had a license issued under this Article cancelled by the Secretary for cause.

(3) Had a tobacco products license or registration issued by another state cancelled for cause.

(4) Been convicted of fraud or misrepresentation.

(5) Been convicted of any other offense that indicates the applicant may not comply with this Article if issued a license.

(6) Failed to remit payment for a tax debt under this Chapter. The term 'tax debt' has the same meaning as defined in G.S. 105-243.1.

(7) Failed to file a return due under this Chapter.

~~(b)~~(d) Refund. – A refund of a license tax is allowed only when the tax was collected or paid in error. No refund is allowed when a license holder surrenders a license or the Secretary revokes a license.

~~(c)~~(e) Duplicate or Amended License. – Upon application to the Secretary, a license holder may obtain without charge ~~one of the following:~~a duplicate or amended license as provided in this subsection. A duplicate or amended license must state that it is a duplicate or amended license, as appropriate.

(1) A duplicate license, if the license holder establishes that the original license has been lost, destroyed, or defaced.

(2) An amended license, if the license holder establishes that the location of the place of business for which the license was issued has changed.

~~A duplicate or amended license shall state that it is a duplicate or amended license, as appropriate.~~

(f) Information on License. – The Secretary must include the following information on each license required by this Article:

(1) The legal name of the license holder.

(2) The name under which the license holder conducts business.
(3) The physical address of the place of business of the license holder.
(4) The account number assigned to the license by the Department.

(g) Records. – The Secretary must keep a record of the following:
(1) Applicants for a license under this Article.
(2) Persons to whom a license has been issued under this Article.
(3) Persons that hold a current license issued under this Article, by license category.

(h) Lists. – The Secretary must provide the list required under subsection (g) of this section upon request of a manufacturer that is a license holder under this Article. The list must state the name, account number, and business address of each license holder on the list."

SECTION 24.(b) G.S. 105-113.4B reads as rewritten:

"**§ 105-113.4B. Reasons why the Secretary can cancel a license.**

(a) Reasons. – The Secretary may cancel a license issued under this Article upon the written request of the license holder. The Secretary may summarily cancel the license of a license holder when the Secretary finds that the license holder is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may cancel the license of a license holder that commits one or more of the following acts after holding a hearing on whether the license should be cancelled:

(1) ~~A violation of this Article.~~Fails to obtain a license required by this Article.
(2) Willfully fails to file a return required by this Article.
(3) Willfully fails to pay a tax when due under this Article.
(4) Makes a false statement in an application or return required under this Article.
(5) Fails to keep records as required by this Article.
(6) Refuses to allow the Secretary or a representative of the Secretary to examine the person's books, accounts, and records concerning tobacco product.
(7) Fails to disclose the correct amount of tobacco product taxable in this State.
(8) Fails to file a replacement bond or an additional bond if required by the Secretary under this Article.
~~(2)~~(9) ~~A violation of~~ Violates G.S. 14-401.18.

(b) Procedure. – The Secretary must send a person whose license is summarily cancelled a notice of the cancellation and must give the person an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary must give a person whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a

notice of hearing must be sent by registered mail to the last known address of the license holder.

(c) Release of Bond. – When the Secretary cancels a license and the license holder has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions concerning a bond or an irrevocable letter of credit filed by the license holder:

(1) Return an irrevocable letter of credit to the license holder.

(2) Return a bond to the license holder or notify the person liable on the bond and the license holder that the person is released from liability on the bond."

SECTION 24.(c) G.S. 105-113.13 reads as rewritten:

"**§ 105-113.13. Secretary may ~~investigate applicant for distributor's license and~~ require a ~~bond.~~bond or irrevocable letter of credit.**

~~(a) Investigation. – The Secretary may investigate an applicant for a distributor's license to determine if the information the applicant submits with the application is accurate and if the applicant is eligible to be licensed as a distributor. The Secretary may decline to issue a distributor's license to an applicant when the Secretary has reasonable cause to believe any of the following:~~

~~(1) That the applicant has willfully withheld information requested by the Secretary for the purpose of determining the applicant's eligibility for the license.~~

~~(2) That information submitted with the application is false or misleading.~~

~~(3) That the application is not made in good faith.~~

~~(b) Bond. –~~ The Secretary may require a distributor to furnish a bond in an amount that adequately protects the State from loss if the distributor fails to pay taxes due under this Part. A bond shall be conditioned on compliance with this Part, shall be payable to the State, and shall be in the form required by the Secretary. The Secretary shall set the bond amount based on the anticipated tax liability of the distributor. The Secretary shall periodically review the sufficiency of bonds required of the distributor and shall increase the amount of a required bond if the bond amount no longer covers the anticipated tax liability of the distributor. The Secretary shall decrease the amount of a required bond if the Secretary finds that a lower bond amount will protect the State adequately from loss. For purposes of this section, a bond may also include an irrevocable letter of credit."

SECTION 25.(a) G.S. 105-164.3 reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

(1) Advertising and promotional direct mail. – Printed material that meets the definition of 'direct mail' and the primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product,

person, business, or organization. As used in this subdivision, 'product' means tangible personal property, digital property, or a service.

~~(1)~~(1a) Analytical services. – Testing laboratories that are included in national industry 541380 of NAICS or medical laboratories that are included in national industry 621511 of NAICS.

~~(1a)~~(1b) Ancillary service. – A service associated with or incidental to the provision of a telecommunications service. The term includes detailed communications billing, directory assistance, vertical service, and voice mail service. A vertical service is a service, such as call forwarding, caller ID, three-way calling, and conference bridging, that allows a customer to identify a caller or manage multiple calls and call connections.

~~(1b)~~(1c) through ~~(1d)~~(1e) Reserved for future codification purposes.

~~(1e)~~(1f) Audio work. – A series of musical, spoken, or other sounds, including a ringtone.

~~(1f)~~(1g) Reserved for future codification purposes.

~~(1g)~~(1h) Audiovisual work. – A series of related images and any sounds accompanying the images that impart an impression of motion when shown in succession.

~~(1h)~~(1i) Reserved for future codification purposes.

~~(1i)~~(1j) Bundled transaction. – A retail sale of two or more distinct and identifiable products, at least one of which is taxable and one of which is exempt, for one nonitemized price. Products are not sold for one nonitemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each product. A bundled transaction does not include the retail sale of any of the following:

a. A product and any packaging item that accompanies the product and is exempt under G.S. 105-164.13(23).
b. A sale of two or more products whose combined price varies, or is negotiable, depending on the products the purchaser selects.
c. A sale of a product accompanied by a transfer of another product with no additional consideration.
d. A product and the delivery or installation of the product.
e. A product and any service necessary to complete the sale.

~~(1j)~~(1k) Reserved for future codification purposes.

~~(1k)~~(1l) Business. – An activity a person engages in or causes another to engage in with the object of gain, profit, benefit, or advantage, either direct or indirect. The term does not include an occasional and isolated sale or transaction by a person who does not claim to be engaged in business.

~~(1l)~~(1m) Reserved for future codification purposes.

~~(1m)~~(1n) Cable service. – The one-way transmission to subscribers of video programming or other programming service and any subscriber interaction required to select or use the service.

...."

SECTION 25.(b) G.S. 105-164.4B(d) reads as rewritten:

"(d) Exceptions. – This section does not apply to the following:

(1) Telecommunications services. – Telecommunications services are sourced in accordance with G.S. 105-164.4C.

(2) Direct mail. – Direct mail ~~that meets one of the following descriptions is sourced to the location where the property is delivered, and direct mail that does not meet one of these descriptions is sourced to the location from which the direct mail was shipped:~~is sourced as follows:

a. ~~Direct mail~~ To the location where the direct mail is delivered if it (i) is purchased pursuant to a direct pay ~~permit.~~permit; or (ii) when

~~b.~~ ~~When~~ the purchaser provides the seller with information to show the jurisdictions to which the direct mail is to be delivered.

b. To the location from which the direct mail was shipped if (i) it is advertising and promotional direct mail; and (ii) sub-subdivision a. of this subdivision does not apply.

c. 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 if neither sub-subdivision a. nor b. of this subdivision applies.

(3) Florist wire sale. – A florist wire sale is sourced to the business location of the florist that takes an order for the sale. A "florist wire sale" is a sale in which a retail florist takes a customer's order and transmits the order to another retail florist to be filled and delivered."

SECTION 26.(a) Section 7 of S.L. 2011-296 reads as rewritten:

"**SECTION 7.** This act becomes effective October 1, 2011, and applies to instruments registered on or after that date. ~~Sections 1 through 3 of this act expire July 1, 2013.~~"

SECTION 26.(b) The lead-in language for Section 2.16 of S.L. 2012-79 reads as rewritten:

"**SECTION 2.16.** Effective when it becomes ~~law, but expiring at the same time as Section 1 of S.L. 2011-296 expires (currently July 1, 2013),~~ law, G.S. 161-10(a), as rewritten by S.L. 2011-296, reads as rewritten:"

SECTION 27. Sections 5, 6, and 7 of this act are effective for taxable years beginning on or after January 1, 2012. Section 24 of this act becomes effective July 1, 2013. The remainder of this act is effective when it becomes law.

Bill Draft 2013-SVxz-3:
Rev Laws Technical, Clarifying, & Admin. Chg .

2011-2012 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	December 4, 2012
Introduced by:		**Prepared by:**	Trina Griffin
Analysis of:	2013-SVxz-3		Committee Counsel

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

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

BILL ANALYSIS:

Section	Explanation
1	Corrects several references to "reports and statements" where there is no longer a requirement to submit a statement and substitutes the more appropriate term "return." Also replaces "make" or "making" a return with "file" or "filing." Makes other grammatical and stylistic changes to conform to drafting conventions.
2	Deletes a statutory reference due to repeal of another subsection.[1]
3	Corrects reference to period of underpayment to reflect the change in the due date of the corporate return from the third month (March 15) to the fourth month (April 15).
4	Corrects reference to the proper carryforward period under Article 3J when a taxpayer fails to qualify for an extended carryforward period due to a large investment.[2]

[1] In S.L. 2010-89, the General Assembly provided an alternative apportionment formula for a corporation that signed a letter of commitment by September 15, 2010, certifying that it planned to invest at least $500 million in private funds to construct a facility in a development tier one area. No company signed such a letter. The General Assembly enacted the provision at the request of Microsoft; Microsoft announced in August of 2010 that it would be locating in Virginia. Since the alternative apportionment formula provided in G.S. 105-130.4(t2) and G.S. 105-122(c1)(3) was no longer needed, the General Assembly repealed those provision in S.L. 2011-330, s. 5. Therefore, the references to the repealed subdivisions in G.S. 105-122(c1)(2) and G.S. 105-130.4(t1) should be deleted.

[2] The Article 3J credits for creating jobs and for investing in business property have a 5-year carryforward period and the credit for investing in real property has a 15-year carryforward period. S.L. 2012-74 temporarily allows for

5	Makes technical corrections related to the shift from taxable income to AGI as the starting point for determining NC taxable income.[3]
6	Ensures that relevant transitional adjustments under G.S. 105-134.7 are retained by adding them to G.S. 105-134.6 with corresponding changes throughout.
7	Clarifies the method for determining the amount of credit that a taxpayer is eligible for under the credit for the disabled. The amount of the credit depends on whether a taxpayer's "North Carolina adjusted gross income" is greater than or less than a threshold income amount set out in the statute. However, the definition of "North Carolina Adjusted Gross Income" is unclear. The Department has interpreted the term to mean North Carolina taxable income with the additions of the personal exemptions, the standard deduction (or federal itemized deductions), and some of the adjustments in G.S. 105-134.6(d). The term becomes even more unclear now that the starting point for determining NC taxable income has been changed to AGI. Changing "North Carolina AGI" to "NC taxable income" closely parallels how the Department has been interpreting this credit.
8	Amends definitions related to the Streamlined Agreement and adjusts the definition of 'storage' to clarify that the purchaser must know the original purpose and location where items will be used at the time of purchase.
9	Amends the facilitator reporting requirements to recognize various business practices and recordkeeping by facilitators. The Department was advised that some facilitators provide a credit card number for use by the hotelier before, during, or after the rental of accommodations.
10	Clarifies that a credit is allowed for use tax if the tax is shown on the invoice or other documentation issued by the retailer.
11	Clarifies that the sales and use tax exemption for tangible personal property delivered by the retailer for use outside the State applies to certain printed material. This exemption was adjusted during the 2011 Session at the request of the Department to add "by the retailer." However, additional adjustments are needed to retain the exemption for printed material that is not delivered by the retailer to the United States Postal Service or that is not purchased with a direct pay permit.[4]

a 20-year carryforward period under Article 3J for a taxpayer who makes an investment of $100 million in business and real property in a tier one county.

[3] Section 31A.1 of S.L. 2001-145 changed the starting point for calculating NC taxable income from federal taxable income to federal adjusted gross income. This change did not change the tax base or increase NC tax in any way.

[4] The proposed language tracks the language that is in Sales and Use Tax Bulletin 7.

	Amends the exemption for computer software "designed to run on an enterprise server operating system." The inclusion of the term "designed" has been problematic. The Department issued an "Important Notice" in February 2010 in an attempt to further clarify this issue. At issue are products that are designed but may not be run on an enterprise server operating system. It is burdensome for the Department to attempt to determine if the products meet the "designed" requirement.
12	Clarifies that a single member LLC that is disregarded for federal income tax purposes qualifies for a refund if the owner of the single member LLC is a 501(c)(3) and the LLC engages in qualifying activities. Replaces the term "medicines" with "over-the-counter drugs" in the statute that permits a refund of sales and use taxes to nonprofit entities and hospitals.
13	Ensures that statute is consistent with the Sales and Use Tax Technical Bulletin Section 46-1 E., which provides that the issuance of a direct pay permit to avoid payment of State and local sales taxes levied on hotel accommodations is a prohibited use.
14	Repeals G.S. 105-164.35, which authorizes the Secretary to recompute sales and use tax if, after examining a return, he determines the correct amount of tax is greater or less than the amount shown on the return and to credit or refund excessive payments. This statute, which is specific to sales and use tax, is unnecessary because G.S. 105-241.7 gives the Secretary this authority for all tax types.
15	Provides liability relief to retailers for erroneous information provided by the Department regarding the taxability of certain items or insufficient notice regarding a sales tax rate change as required by the Streamlined Agreement.
16	Clarifies that the 1%/$80 privilege tax rate applies at a plant regardless of the overall industry of the taxpayer and to clarify that items must be produced for sale.
17	Clarifies that the credit allowed under Article 5F for similar tax paid to another state also applies to sales and use tax paid in this State and not just paid to another state.
18	Corrects references to Department Divisions based on reorganization. Adds various forms of identity theft to the subject matter jurisdiction of revenue law enforcement officers. Generally speaking, revenue law enforcement officers have the authority to serve and execute notices, orders, warrants, and demands, have full powers of arrest, and must be certified as criminal justice officers.

19	Clarifies that penalties and interest that accrue for a business entity are transferrable to a responsible person. The Department has received questions where the sales tax was collected, but a representative argues that the penalty and interest due on the collection at the entity level should not be transferred to the responsible person. This issue was recently addressed in Final Agency Decision issued September 18, 2012.
20	Deletes obsolete provision. The Secretary no longer makes a final agency decision in contested tax cases. Substantive final decisions are published on the OAH website.
21	Modifies the circumstances under which the Department may share information with law enforcement agencies. On occasion, the Department has shared information with the IRS or another taxing jurisdiction under G.S. 105-259(b)(3) that is connected to a criminal investigation. However, some of the information shared may be information that is not "discovered" in the course of the investigation (i.e. audits that occurred prior to the criminal investigation that led the Department to initiate the criminal investigation). While those records may be shared with other taxing agencies (i.e. the IRS) under (b)(3), there may not be specific authorization to share the information with prosecutors (i.e. the US Attorney) who later are working on the criminal case. In addition, the change gets rid of awkward language regarding who may receive the information. The Department has agreements with all agencies with whom it is allowed to share information listing the specific individuals allowed to receive the information. A literal reading of the current language would allow the Department to share the info only with the head of the agency. It clarifies that a prosecutorial agency is a law enforcement agency. Finally, it allows the share of information with local law enforcement or law enforcement from another state.
22	Conforms payment for TIMS to current practice. The language in the 2012-13 budget bill differed from standard practice used by DOR since the beginning of benefits funding for the project. Technically, OSBM authorizes DOR to make purchases rather than making those purchases itself.
23	Modifies the circumstances under which the Department may share information regarding the unauthorized substances tax. The current restriction on disclosure could prevent Department employees from sharing information in situations that do not present concerns about Constitutional protections for criminal defendants like double jeopardy or self-incrimination such as: • A prosecutor investigates allegations of law enforcement unlawfully seizing property from specific individuals. Law enforcement personnel report the property has been turned over the Department to

	satisfy a tax debt. • A prosecutor requests information from the Department in order to satisfy his obligation to provide the defendant in a criminal case with potentially exculpatory information. • A Department employee serving a tax warrant witnesses a crime committed by the taxpayer against a third party.
24	Subsection (a) clarifies the procedure and requirements for obtaining a license for the distribution of tobacco products and provides the Department with specific guidance as to when a license may be denied. This subsection also requires the Department to include certain information on the face of each license, and directs the Department to keep a record of license holders that may be provided to other license holders upon request. Subsection (b) clarifies the violations for which the Secretary, after a hearing, may cancel a license for the distribution of tobacco products. Subsection (c) clarifies a distributor of cigarettes may provide security to the Secretary in the form of an irrevocable letter of credit as an alternative to a bond. This subsection also deletes a redundant provision for investigation of license applicants.
25	Makes changes to the sourcing of direct mail to comply with Streamlined requirements. Under current law, direct mail is sourced to the location from which it is shipped unless it was purchased using a direct pay permit or the purchaser provides the seller with information showing the jurisdictions to which the mail is to be delivered. In those instances, the mail is sourced to the delivery location. Under the Streamlined Agreement, direct mail categorized into "advertising and promotional direct mail" and "other direct mail." The current law as stated above is accurate except that "other direct mail" (direct mail other than advertising and promotional direct mail) should be sourced to the purchaser's address available from the seller's business records if the mail is not purchased using a direct pay permit or if the purchaser does not provide the seller with jurisdictional delivery information.

26	Removes the sunset on recent changes to certain fees collected by the register of deeds. S.L. 2011-296 changed the fees collected by register of deeds for the purpose of simplifying their collection and remittance. The provision included a July 1, 2013 sunset to determine whether the changes were easy to administer and to ensure that the registers of deeds were satisfied with the change. The provision was modified in 2012 to clarify confusion that some registers of deeds had regarding 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.

2013-SVz-3-SMSV-1 v7

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 2012 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 2012 REGULAR SESSION OF THE 2011 GENERAL ASSEMBLY

SHORT TITLE	SENATE SPONSORS	HOUSE SPONSORS	BILL #	FINAL STATUS*
Expedited Rule Making for Forced Combination	**Rucho; Hartsell**	**Howard; Starnes**	**HB 1027 SB 824**	**Enacted* SL 2012-43, [SB 824]**
Unemployment Insurance Changes	**Rucho; Hartsell**	**Howard; Starnes**	**HB 1024 SB 828**	**Enacted* SL 2012-134, [SB 828]**
Extend Tax Provisions	**Rucho; Hartsell; Blue**	**Howard; Starnes**	**HB 1025 SB 827**	**Enacted* SL 2012-36, [HB 1025]**
Appraisal Management Company Reported to Department of Revenue	**Rucho; Hartsell**	**Howard; Starnes**	**HB 1028 SB 825**	**Enacted* SL 2012-65, [HB 1028]**
Revenue Laws Technical, Clarifying, & Administrative Changes	**Rucho; Hartsell**	**Howard; Starnes**	**HB 1026 SB 826**	**Enacted* SL 2012-79, [SB 826]**

*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 ***Sen. Bob Rucho***

Wednesday, October 3, 2012
Room 544, Legislative Office Building
9:30 a.m.

I. Welcome and Introductions

II. 2012 Finance Law Changes

- *Trina Griffin, Research Division*

III. General Fund Revenue Outlook

- *Barry Boardman, Fiscal Research Division*

IV. Department of Revenue Update : Compliance, Collections, & Appeals

- *David Hoyle, Secretary*
- *Linda Millsaps, Chief Operating Officer*

V. Administrative and Modernization Changes to the Excise Tax on Tobacco (Proposed Legislation)

- *Heather Fennell, Research Division*
- *Al Milak, Excise Tax Division, Department of Revenue*
- *Louise Butler, NC Wholesalers Association*

VI. Overview of the Taxation and Valuation of Leasehold Interests in Exempt Real Property

- *Greg Roney, Research Division*
- *Public Comment*
- *David Baker, Local Government Division, Department of Revenue*

VII. Adjournment

Next Meeting Date: Wednesday, November 7, 2012
in Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

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

Thursday, November 8, 2012
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of Minutes from October 3 Meeting

II. "It's Never the Best Time for NC Tax Reform"

- *Brent Lane, Director, UNC Center for Competitive Economies*

III. Unemployment Insurance Program

Overview of the Unemployment Insurance Trust Fund Issues and Policy Options

- *Cindy Avrette, Research Division*

UI Program Integrity, Workforce Development, and Administrative Changes related to the Merger of the Department of Commerce and the Employment Security Division

- Dempsey Benton, Assistant Secretary, Division of Employment Security, Department of Commerce

"North Carolina's Unemployment Insurance System: A Simulation and Policy Analysis", *Final Report prepared for The NC Department of Commerce, DES, by the W.E. Upjohn Institute for Employment Research*

- *Dr. Christopher J. O'Leary, Co-Principal Investigator, W.E. Upjohn Institute*
- *Dr. Richard Hobbie, Executive Director, National Association of State Workforce Agencies*

Comments

- *Alexandra Sirota, Director, Budget & Tax Center*
- *Gary Salamido, Vice President-Government Affairs, NC Chamber of Commerce*

IV. Adjournment

Next Meeting Date: Wednesday, December 5, 2012
in Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

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

Wednesday, December 5, 2012
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of Minutes from November 8, 2012, Meeting**

II. **Bill Draft: Unemployment Insurance Trust Fund Solvency & Program Changes**

- **Trust Fund Solvency: Benefit Changes, Contribution Changes, and Fund Balance Changes**
  Cindy Avrette, Research Division

- **Simulation of UI Tax and Benefit Reforms**
  Rodney Bizzell, Fiscal Research Division

- **Considerations for Refinancing the Debt**
  State Treasurer's Office

- **Workforce Development Initiatives**
  Aubrey Incorvaia, Fiscal Research Division
  Roger Shackleford, Assistant Secretary, Division of Workforce Solutions, Department of Commerce

- **UI Programmatic Changes**
  Greg Roney, Research Division

- **Comments from Interested Parties**

III. **Bill Draft: Revenue Laws Technical, Clarifying, and Administrative Changes**
Trina Griffin, Research Division

IV. **Adjournment**

Next Meeting Date: Tuesday, January 8, 2013
in Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

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

Tuesday, January 8, 2013
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of Minutes from the December 5, 2012, Meeting

II. Overview of Draft Report

Legislative Proposal #1: UI Fund Solvency & Program Changes
Cindy Avrette, Research Division, NCGA

Legislative Proposal #2: Revenue Laws Technical, Clarifying, and Administrative Changes
Trina Griffin, Research Division, NCGA

III. Approval of Final Report

IV. Adjournment