

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1829*
Committee Substitute Favorable 6/3/10

Short Title: Econ. Devpt. and Tax Collection Changes. (Public)

Sponsors:

Referred to:

May 20, 2010

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE MILL REHABILITATION CREDIT; TO MAKE CHANGES TO THE CREDIT FOR INVESTING IN RENEWABLE ENERGY PROPERTY; TO ESTABLISH A CREDIT FOR CONSTRUCTING A RENEWABLE ENERGY PROPERTY FACILITY; TO LOWER THE SALES TAX COMPLIANCE BURDEN ON SMALL RETAILERS; TO RELIEVE THE ANNUAL REPORT COMPLIANCE BURDEN ON SMALL BUSINESS; TO REDUCE THE FRANCHISE TAX BURDEN ON CONSTRUCTION COMPANIES; AND TO IMPROVE THE TAX AND DEBT COLLECTION PROCESS, AS RECOMMENDED BY THE REVENUE LAWS STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

EXTEND MILL REHABILITATION CREDIT

SECTION 1.(a) G.S. 105-129.75 reads as rewritten:

"§ 105-129.75. Sunset.

This Article expires ~~January 1, 2011,~~ January 1, 2014, for rehabilitation projects for which an application for an eligibility certification is submitted on or after that date."

SECTION 1.(b) This section is effective when it becomes law.

CHANGES TO CREDIT FOR INVESTING IN RENEWABLE ENERGY PROPERTY

SECTION 2.(a) G.S. 105-129.15 reads as rewritten:

"§ 105-129.15. Definitions.

The following definitions apply in this Article:

...

(2) ~~Cost. – In the case of property owned by the taxpayer, cost~~ The cost of property is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

...

(4b) Installation. – Renewable energy property that, standing alone or in combination with other machinery, equipment, or real property, is able to produce usable renewable energy on its own.

(4e) Pass-through entity. – Defined in G.S. 105-228.90.

...."

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

"§ 105-129.16A. Credit for investing in renewable energy property.



1 (a) Credit. – If a taxpayer that has constructed, purchased, or leased renewable energy
2 property places it in service in this State during the taxable year, the taxpayer is allowed a
3 credit equal to thirty-five percent (35%) of the cost of the property. In the case of renewable
4 energy property that serves a single-family dwelling, the credit must be taken for the taxable
5 year in which the property is placed in service. For all other renewable energy property, the
6 entire credit may not be taken for the taxable year in which the property is placed in service but
7 must be taken in five equal installments beginning with the taxable year in which the property
8 is placed in service.

9 (b) Expiration. – If, in one of the years in which the installment of a credit accrues, the
10 renewable energy property with respect to which the credit was claimed is disposed of, taken
11 out of service, or moved out of State, the credit expires and the taxpayer may not take any
12 remaining installment of the credit. The taxpayer may, however, take the portion of an
13 installment that accrued in a previous year and was carried forward to the extent permitted
14 under G.S. 105-129.17. No credit is allowed under this section to the extent the cost of the
15 renewable energy property was provided by public funds.

16 (c) Ceilings. – The credit allowed by this section may not exceed the applicable ceilings
17 provided in this subsection.

18 (1) Nonresidential Property. – A ceiling of two million five hundred thousand
19 dollars (\$2,500,000) per installation applies to renewable energy property
20 placed in service for any purpose other than residential.

21 (2) Residential Property. – The following ceilings apply to renewable energy
22 property placed in service for residential purposes:

23 a. One thousand four hundred dollars (\$1,400) per dwelling unit for
24 solar energy equipment for domestic water heating, including pool
25 heating.

26 b. Three thousand five hundred dollars (\$3,500) per dwelling unit for
27 solar energy equipment for active space heating, combined active
28 space and domestic hot water systems, and passive space heating.

29 c. Ten thousand five hundred dollars (\$10,500) per installation for any
30 other renewable energy property for residential purposes.

31 d. Eight thousand four hundred dollars (\$8,400) per installation for a
32 geothermal heat pump or geothermal equipment.

33 (d) No Double Credit. – A taxpayer that claims any other credit allowed under this
34 Chapter with respect to renewable energy property may not take the credit allowed in this
35 section with respect to the same property. A taxpayer may not take the credit allowed in this
36 section for renewable energy property the taxpayer leases from another unless the taxpayer
37 obtains the lessor's written certification that the lessor will not claim a credit under this Chapter
38 with respect to the property.

39 (e) Allocation. – Notwithstanding G.S.105-131.8 and G.S. 105-269.15, a pass-through
40 entity that qualifies for the credit provided in this section may allocate the credit among any of
41 its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as
42 determined under the Code, at the end of the taxable year in which the renewable energy
43 property is placed in service, is at least forty percent (40%) of the amount of credit allocated to
44 that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified
45 for the credit directly. A pass-through entity and its owners must include with their tax returns
46 for every taxable year in which an allocated credit is claimed a statement of the allocation made
47 by the pass-through entity and the allocation that would have been required under
48 G.S. 105-131.8 or G.S. 105-269.15.

49 (f) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has
50 qualified for the credit allowed under this section disposes of all or a portion of the owner's
51 interest in the pass-through entity within five years from the date the renewable energy property

1 is placed in service and the owner's interest in the pass-through entity is reduced to less than
2 two-thirds of the owner's interest in the pass-through entity at the time the renewable energy
3 property was placed in service, the owner forfeits a portion of the credit. The amount forfeited
4 is determined by multiplying the amount of credit by the percentage reduction in ownership and
5 then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the
6 recapture percentage found in the table in section 50(a)(1)(B) of the Code. The remaining
7 allowable credit is allocated equally among the five years in which the credit is claimed.

8 (g) Exceptions to Forfeiture. – Forfeiture as provided in subsection (e) of this section is
9 not required if the change in ownership is the result of any of the following:

10 (1) The death of the owner.

11 (2) A merger, consolidation, or similar transaction requiring approval by the
12 shareholders, partners, or members of the taxpayer under applicable State
13 law, to the extent the taxpayer does not receive cash or tangible property in
14 the merger, consolidation, or other similar transaction.

15 (h) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity that
16 forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus
17 interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would
18 have been due if the credit had not been allowed. The past taxes and interest are due 30 days
19 after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to
20 pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

21 (e)(i) Sunset. – This section is repealed effective for renewable energy property placed
22 into service on or after January 1, 2016."

23 **SECTION 2.(c)** This section is effective for taxable years beginning on or after
24 January 1, 2010.

25 26 **ESTABLISH CREDIT FOR CONSTRUCTING A RENEWABLE ENERGY** 27 **PROPERTY FACILITY**

28 **SECTION 3.(a)** Article 3B of Chapter 105 of the General Statutes is amended by
29 adding a new section to read:

30 **"§ 105-129.16L. Credit for constructing a renewable energy property facility.**

31 (a) Credit. – A taxpayer that constructs and places in service in this State a commercial
32 facility for the manufacture of renewable energy property is allowed a credit equal to
33 twenty-five percent (25%) of the cost to the taxpayer of constructing and equipping the facility.
34 The entire credit may not be taken for the taxable year in which the facility is placed in service
35 but must be taken in seven equal annual installments beginning with the taxable year in which
36 the facility is placed in service. If, in one of the years in which the installment of a credit
37 accrues, the facility with respect to which the credit was claimed is disposed of or taken out of
38 service, the credit expires and the taxpayer may not take any remaining installment of the
39 credit. The taxpayer may, however, take the portion of an installment that accrued in a previous
40 year and was carried forward to the extent permitted under G.S. 105-129.17. A taxpayer that
41 claims any other credit allowed under this Chapter with respect to construction of a facility may
42 not take the credit allowed in this section with respect to the same facility.

43 (b) Sunset. – This section is repealed effective for a renewable energy property facility
44 placed in service on or after January 1, 2014."

45 **SECTION 3.(b)** This section becomes effective for taxable years beginning on or
46 after January 1, 2011.

47 48 **LOWER SALES TAX COMPLIANCE BURDEN ON SMALL RETAILERS**

49 **SECTION 4.(a)** G.S. 105-164.16(b1) reads as rewritten:

50 "(b1) Monthly. – A taxpayer who is consistently liable for at least one hundred dollars
51 (\$100.00) but less than ~~ten thousand dollars (\$10,000)~~ fifteen thousand dollars (\$15,000) a

1 month in State and local sales and use taxes must file a return and pay the taxes due on a
2 monthly basis. A monthly return is due by the 20th day of the month following the calendar
3 month covered by the return."

4 **SECTION 4.(b)** G.S. 105-164.16(b2) reads as rewritten:

5 "(b2) Prepayment. – A taxpayer who is consistently liable for at least ~~ten thousand dollars~~
6 ~~(\$10,000)~~ fifteen thousand dollars (\$15,000) a month in State and local sales and use taxes
7 must make a monthly prepayment of the next month's tax liability. The prepayment is due on
8 the date a monthly return is due. The prepayment must equal at least sixty-five percent (65%)
9 of any of the following:

- 10 (1) The amount of tax due for the current month.
- 11 (2) The amount of tax due for the same month in the preceding year.
- 12 (3) The average monthly amount of tax due in the preceding calendar year."

13 **SECTION 4.(c)** G.S. 105-164.16(b1), as rewritten by subsection (a) of this section,
14 reads as rewritten:

15 "(b1) Monthly. – A taxpayer who is consistently liable for at least one hundred dollars
16 (\$100.00) but less than ~~fifteen thousand dollars (\$15,000)~~ twenty thousand dollars (\$20,000) a
17 month in State and local sales and use taxes must file a return and pay the taxes due on a
18 monthly basis. A monthly return is due by the 20th day of the month following the calendar
19 month covered by the return."

20 **SECTION 4.(d)** G.S. 105-164.16(b2), as rewritten by subsection (b) of this
21 section, reads as rewritten:

22 "(b2) Prepayment. – A taxpayer who is consistently liable for at least ~~fifteen thousand~~
23 ~~dollars (\$15,000)~~ twenty thousand dollars (\$20,000) a month in State and local sales and use
24 taxes must make a monthly prepayment of the next month's tax liability. The prepayment is due
25 on the date a monthly return is due. The prepayment must equal at least sixty-five percent
26 (65%) of any of the following:

- 27 (1) The amount of tax due for the current month.
- 28 (2) The amount of tax due for the same month in the preceding year.
- 29 (3) The average monthly amount of tax due in the preceding calendar year."

30 **SECTION 4.(e)** When the Secretary of Revenue conducts a review of a taxpayer's
31 sales and use tax payment schedule requirements under G.S. 105-164.16(b3), the Secretary
32 must identify the taxpayers who are no longer required to make a monthly prepayment of the
33 next month's sales and use tax liability because of the reduction of the sales tax payment
34 threshold under this section and must notify those taxpayers of the change in the taxpayer's
35 payment requirement.

36 **SECTION 4.(f)** Subsections (a) and (b) of this section become effective October 1,
37 2010. Subsections (c) and (d) of this section become effective July 1, 2011. The remainder of
38 this section is effective when it becomes law.

39 **RELIEVE ANNUAL REPORT COMPLIANCE BURDEN ON SMALL BUSINESS**

40 **SECTION 5.(a)** G.S. 55-16-22(c) reads as rewritten:

41 "(c) Due Date. – An annual report eligible to be delivered to the Secretary of Revenue is
42 due by the due date for filing the corporation's income and franchise tax returns. An extension
43 of time to file a return is an extension of time to file an annual report. At the option of the filer,
44 an annual report may be filed directly with the Secretary of State in electronic form. An annual
45 report required to be delivered to the Secretary of State is due by the fifteenth day of the ~~third~~
46 fourth month following the close of the corporation's fiscal year."

47 **SECTION 5.(b)** G.S. 57C-2-23 reads as rewritten:

48 **"§ 57C-2-23. Annual report for Secretary of State.**

49 (a) Requirement and Content. – Each domestic limited liability company other than a
50 professional limited liability company governed by G.S. 57C-2-01(c) and each foreign limited
51

1 liability company authorized to transact business in this State, ~~shall deliver to the Secretary of~~
2 ~~State for filing an annual report, in State must file an annual report with the Secretary of State~~
3 ~~on a form prescribed by the Secretary of State, that sets forth all of the following; and in the~~
4 ~~manner required by the Secretary. The annual report must specify the year to which the report~~
5 ~~applies and must set out the information listed in this subsection. The information must be~~
6 ~~current as of the date the company completes the report. If the information in the company's~~
7 ~~most recent annual report has not changed, the company may certify on its annual report that~~
8 ~~the information has not changed in lieu of restating the information.~~

9 The following information must be included on an annual report of a limited liability
10 company:

- 11 (1) The name of the limited liability or foreign limited liability company and the
12 state or country under whose law it is formed.
- 13 (2) The street address, and the mailing address if different from the street
14 address, of the registered office, the county in which the registered office is
15 located, and the name of its registered agent at that office in this State, and a
16 statement of any change of the registered office or registered agent, or both.
- 17 (3) The address and telephone number of its principal office.
- 18 (4) The names and business addresses of its managers or, if the limited liability
19 company has never had members, its organizers.
- 20 (5) A brief description of the nature of its business.

21 ~~If the information contained in the most recently filed annual report has not changed, a~~
22 ~~certification to that effect may be made instead of setting forth the information required by~~
23 ~~subdivisions (2) through (5) of this subsection. The Secretary of State shall make available the~~
24 ~~form required to file an annual report.~~

25 ~~(b) Information in the annual report must be current as of the date the annual report is~~
26 ~~executed on behalf of the limited liability company or the foreign limited liability company.~~

27 (c) Notice and Due Date. – The Secretary of State must notify limited liability
28 companies of the annual report filing requirement. ~~The first annual report shall be delivered to~~
29 ~~the Secretary of State of a limited liability company is due by April 15th of each year.~~
30 the year following the calendar year in which the company files its articles of organization with the
31 Secretary of State. Each subsequent annual report is due on April 15.

32 (d) Incomplete Report. – If an annual report does not contain the information required
33 by this section, the Secretary of State shall promptly notify the reporting domestic or foreign
34 limited liability company in writing and return the report to it for correction. If the report is
35 corrected to contain the information required by this section and delivered to the Secretary of
36 State within 30 days after the effective date of notice, it is deemed to be timely filed.

37 (e) Amendments. – Amendments to any previously filed annual report may be filed
38 with the Secretary of State at any time for the purpose of correcting, updating, or augmenting
39 the information contained in the annual report."

40 **SECTION 5.(c)** A limited liability company that was formed on or after September
41 1, 2001, but before January 1, 2010, and has filed an annual report in each calendar year after
42 the calendar year in which it was formed is not required to file any additional annual reports for
43 those years. A limited liability company that was formed on or after January 1, 2010, but before
44 April 15, 2010, is not required to file an annual report until April 15, 2011. A limited liability
45 company that has filed more annual reports than is required under this section is not allowed a
46 refund of the annual report filing fee paid for filing the unnecessary report but is not required to
47 pay the annual report filing fee when filing the annual report due April 15, 2011. The Secretary
48 of State must provide a place on the annual report form for calendar year 2011 for a limited
49 liability company to designate that it is not subject to the 2011 annual report filing fee in
50 accordance with this section. The Secretary must also provide instructions that explain why

1 some limited liability companies are subject to the 2011 annual report filing fee and some are
2 not.

3 **SECTION 5.(d)** This section is effective when it becomes law.
4

5 **REDUCE FRANCHISE TAX BURDEN ON CONSTRUCTION COMPANIES**

6 **SECTION 6.(a)** Section 2 of S.L. 2009-422 reads as rewritten:

7 "**SECTION 2.** This act is effective retroactively for taxable years beginning on or after
8 ~~January 1, 2010.~~ January 1, 2007."

9 **SECTION 6.(b)** A taxpayer that paid franchise tax in taxable years 2007, 2008, or
10 2009 and that included billings in excess of costs in its capital base may apply to the
11 Department of Revenue for a refund of any excess tax paid to the extent the refund is the result
12 of the change in the law enacted by this section. A request for a refund must be made on or
13 before January 1, 2011. A request for refund received after that date is barred.

14 **SECTION 6.(c)** This section is effective when it becomes law.
15

16 **IMPROVE TAX AND DEBT COLLECTION PROCESS**

17 **SECTION 7.(a)** G.S. 147-86.20(1) reads as rewritten:

18 **"§ 147-86.20. Definitions.**

19 The following definitions apply in this Article:

- 20 (1) Account ~~Receivable-receivable~~. – An asset of the State reflecting a debt that
21 is owed to the State and has not been received by the State agency servicing
22 the debt. The term includes claims, damages, fees, fines, forfeitures, loans,
23 overpayments, taxes, and tuition as well as penalties, interest, and other costs
24 authorized by law. The term does not include court costs or fees assessed in
25 actions before the General Court of Justice or counsel fees and other
26 expenses of representing indigents under Article 36 of Chapter 7A of the
27 General Statutes.

28"

29 **SECTION 7.(b)** G.S. 147-86.22 reads as rewritten:

30 **"§ 147-86.22. Statewide accounts receivable program.**

31 (a) Program. – The State Controller shall implement a statewide accounts receivable
32 program. As part of this program, the State Controller shall do all of the following:

- 33 (1) Monitor the State's accounts receivable collection efforts.
34 (2) Coordinate information, systems, and procedures between State agencies to
35 maximize the collection of past-due accounts receivable.
36 (3) Adopt policies and procedures for the management and collection of
37 accounts receivable by State agencies.
38 (4) Establish procedures for writing off accounts ~~receivable and for determining~~
39 ~~when to end efforts to collect accounts receivable after they have been~~
40 ~~written off-receivable~~.

41 (b) Electronic Payment. – Notwithstanding the provisions of G.S. 147-86.20 and
42 G.S. 147-86.21, this subsection applies to debts owed a community college, a local school
43 administrative unit, an area mental health, developmental disabilities, and substance abuse
44 authority, and the Administrative Office of the Courts, and to debts payable to or through the
45 office of a clerk of superior court or a magistrate, as well as to debts owed to other State
46 agencies as defined in G.S. 147-86.20.

47 The State Controller shall establish policies that allow accounts receivable to be payable
48 under certain conditions by electronic payment. These policies shall be established with the
49 concurrence of the State Treasurer. In addition, any policies that apply to debts payable to or
50 through the office of a clerk of superior court or a magistrate shall be established with the
51 concurrence of the Administrative Officer of the Courts. The Administrative Officer of the

1 Courts may also establish policies otherwise authorized by law that apply to these debts as long
2 as those policies are not inconsistent with the Controller's policies.

3 A condition of payment by electronic payment is receipt by the appropriate State agency of
4 the full amount of the account receivable owed to the State agency. A debtor who pays by
5 electronic payment may be required to pay any fee or charge associated with the use of
6 electronic payment. Fees associated with processing electronic payments may be paid out of the
7 General Fund and Highway Fund if the payment of the fee by the State is economically
8 beneficial to the State and the payment of the fee by the State has been approved by the State
9 Controller and State Treasurer.

10 The State Controller and State Treasurer shall consult with the Joint Legislative
11 Commission on Governmental Operations before establishing policies that allow accounts
12 receivable to be payable by electronic payment and before authorizing fees associated with
13 electronic payment to be paid out of the General Fund and Highway Fund. A State agency must
14 also consult with the Joint Legislative Commission on Governmental Operations before
15 implementing any program to accept payment under the policies established pursuant to this
16 subsection.

17 A payment of an account receivable that is made by electronic payment and is not honored
18 by the issuer of the card or the financial institution offering electronic funds transfer does not
19 relieve the debtor of the obligation to pay the account receivable.

20 (c) Collection Techniques. – The State Controller, in conjunction with the Office of the
21 Attorney General, shall establish policies and procedures to govern techniques for collection of
22 accounts receivable. These techniques may include use of credit reporting bureaus, judicial
23 remedies authorized by law, and administrative setoff by a reduction of ~~an individual's~~ a tax
24 refund pursuant to the Setoff Debt Collection Act, Chapter 105A of the General Statutes, or a
25 reduction of another payment, other than payroll, due from the State to a person to reduce or
26 eliminate an account receivable that the person owes the State.

27 ~~No later than January 1, 1999, the~~The State Controller shall negotiate a contract with a third
28 party to perform an audit and collection process of inadvertent overpayments by State agencies
29 to vendors as a result of pricing errors, neglected rebates and discounts, miscalculated freight
30 charges, unclaimed refunds, erroneously paid excise taxes, and related errors. The third party
31 shall be compensated only from funds recovered as a result of the audit. Savings realized in
32 excess of costs shall be transferred from the agency to the Office of State Budget and
33 Management and placed in a special reserve account for future direction by the General
34 Assembly. Any disputed savings shall be settled by the State Controller. This paragraph does
35 not apply to the purchase of medical services by State agencies or payments used to reimburse
36 or otherwise pay for health care services."

37 **SECTION 7.(c)** G.S. 147-86.25 reads as rewritten:

38 **"§ 147-86.25. Setoff debt collection.**

39 The State Controller shall implement a statewide setoff debt collection program to provide
40 for collection of ~~accounts receivable that have been written off. The statewide program shall~~
41 ~~supplement the Setoff Debt Collection Act, Chapter 105A of the General Statutes, and shall~~
42 ~~provide for written off~~the following accounts receivable ~~to be set off~~by setoff against payments
43 the State owes to debtors, other than payments of ~~individual income~~ tax refunds and
44 ~~payroll.~~payroll:

45 (1) Accounts receivable submitted to the Department of Revenue by a claimant
46 agency under the Setoff Debt Collection Act, Chapter 105A of the General
47 Statutes.

48 (2) An overdue tax debt, as defined in G.S. 105-243.1.

49 ~~A program shall provide that, before final setoff can occur, the State agency servicing the~~
50 ~~debt must notify the debtor of the proposed setoff and of the debtor's right to contest the setoff~~
51 ~~through an administrative hearing and judicial review. A proposed setoff by a State agency that~~

1 is a "claimant agency" under Chapter 105A of the General Statutes shall be conducted in
 2 accordance with the procedures the State agency must follow under that Chapter. A proposed
 3 setoff by a State agency that is not a "claimant agency" under Chapter 105A of the General
 4 Statutes shall be conducted under Articles 3 and 4 of Chapter 150B of the General Statutes."

5 **SECTION 7.(d)** G.S. 105A-2 reads as rewritten:

6 **"§ 105A-2. Definitions.**

7 The following definitions apply in this Chapter:

8 ...

9 (3) Debtor. – ~~An individual~~ A person who owes a debt.

10 ...

11 (8) Refund. – ~~An individual's North Carolina income~~ A debtor's North Carolina
 12 tax refund.

13 (9) State agency. – Any of the following:

14 a. A unit of the executive, legislative, or judicial branch of State
 15 government.

16 b. A local agency, to the extent it administers a program supervised by
 17 the Department of Health and Human Services or it operates a Child
 18 Support Enforcement Program, enabled by Chapter 110, Article 9,
 19 and Title IV, Part D of the Social Security Act.

20 c. A community college."

21 **SECTION 7.(e)** G.S. 105A-3(c) reads as rewritten:

22 "(c) Identifying Information. – All claimant agencies shall whenever possible obtain the
 23 full name, social security ~~number, number or federal identification number,~~ address, and any
 24 other identifying information required by the Department from any person for whom the
 25 agencies provide any service or transact any business and who the claimant agencies can
 26 foresee may become a debtor under this Chapter."

27 **SECTION 7.(f)** G.S. 105A-14(a) reads as rewritten:

28 "(a) Simultaneously with the transmittal of the net proceeds collected to a claimant
 29 agency, the Department must provide the agency with an accounting of the setoffs for which
 30 payment is being made. The accounting must whenever ~~possible,~~ possible include the full
 31 names of the debtors, the debtors' social security ~~numbers,~~ numbers or federal identification
 32 numbers, the gross proceeds collected per setoff, the net proceeds collected per setoff, and the
 33 collection assistance fee added to the debt and collected per setoff."

34 **SECTION 7.(g)** G.S. 105-259(b)(18) reads as rewritten:

35 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has
 36 access to tax information in the course of service to or employment by the State may not
 37 disclose the information to any other person except as provided in this subsection. Standards
 38 used or to be used for the selection of returns for examination and data used or to be used for
 39 determining the standards may not be disclosed for any purpose. All other tax information may
 40 be disclosed only if the disclosure is made for one of the following purposes:

41 ...

42 (18) To furnish to the Office of the State Controller ~~the name, address, and~~
 43 ~~account and identification numbers of a taxpayer upon request to~~
 44 ~~enable~~ information needed by the State Controller to implement the setoff
 45 debt collection program established under G.S. 147-86.25, verify statewide
 46 vendor ~~files~~ files, or track debtors of the State.

47"

48 **SECTION 7.(h)** G.S. 105-242(b) reads as rewritten:

49 "(b) ~~Garnishment and Attachment.~~ Attachment and Garnishment. – Intangible property
 50 that belongs to a taxpayer, is owed to a taxpayer, or has been transferred by a taxpayer under
 51 circumstances that would permit it to be levied upon if it were tangible property is subject to

1 attachment and garnishment in payment of a tax that is due from the taxpayer and is collectible
2 under G.S. 105-241.22. Intangible personal property includes bank deposits, rent, salaries,
3 wages, property held in the Escheat Fund, and any other property incapable of manual levy or
4 delivery. AG.S. 105-242.1 sets out the procedure for attachment and garnishment of intangible
5 property.

6 A person who is in possession of intangible property that is subject to attachment and
7 garnishment is the garnishee and is liable for the amount the taxpayer owes. The liability
8 applies only to the amount of the taxpayer's property in the garnishee's possession, reduced by
9 any amount the taxpayer owes the garnishee. ~~G.S. 105-242.1 sets out the procedure for~~
10 ~~attachment and garnishment of intangible property.~~

11 The Secretary may submit to a financial institution, as defined in G.S. 53B-2, information
12 that identifies a taxpayer who owes a tax debt that is collectible under G.S. 105-241.22 and the
13 amount of the debt. The Secretary may submit the information on a quarterly basis or, with the
14 agreement of the financial institution, on a more frequent basis. A financial institution that
15 receives the information must determine the amount, if any, of intangible property it holds that
16 belongs to the taxpayer and must inform the Secretary of its determination. The Secretary must
17 reimburse a financial institution for its costs in providing the information, not to exceed the
18 amount payable to the financial institution under G.S. 110-139 for providing information for
19 use in locating a noncustodial parent.

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

23 **SECTION 7.(i)** G.S. 105-242.1 reads as rewritten:

24 **"§ 105-242.1. Procedure for attachment and garnishment.**

25 (a) Notice. – G.S. 105-242 specifies when intangible property is subject to attachment
26 and garnishment. Before the Department attaches and garnishes intangible property in payment
27 of a tax, the Department must send the garnishee a notice of garnishment. The notice must be
28 sent in accordance with the methods authorized in G.S. 105-241.20 ~~or by registered or certified~~
29 ~~mail, or, with the agreement of the garnishee, by electronic means.~~ The notice must contain all
30 of the following ~~information:~~ information, unless the notice is an electronic notice subject to
31 subsection (a1) of this section:

- 32 (1) ~~The taxpayer's name, address, and social security number or federal~~
33 ~~identification number.~~ name.
- 34 (2) ~~The type of tax the taxpayer owes and the tax periods for which the tax is~~
35 ~~owed.~~ taxpayer's social security number or federal identification number.
- 36 (3) The amount of tax, interest, and penalties the taxpayer owes.
- 37 (4) An explanation of the liability of a garnishee for tax owed by a taxpayer.
- 38 (5) An explanation of the garnishee's responsibility concerning the notice.

39 (a1) Electronic Notice. – Before the Department sends an electronic notice of
40 garnishment to a garnishee, the Department and the garnishee must have an agreement that
41 establishes the protocol for transmitting the notice and provides the information required under
42 subdivisions (4) and (5) of subsection (a) of this section. An electronic notice must contain the
43 information required under subdivisions (1), (2), and (3) of subsection (a) of this section.

44 (b) Action. – ~~Within 30 days after receiving a notice of garnishment, a~~ A garnishee must
45 comply with the a notice of garnishment or file a written response to the notice. ~~notice within~~
46 the time set in this subsection. A garnishee that is a financial institution must comply or file a
47 response within 20 days after receiving a notice of garnishment. All other garnishees must
48 comply or file a response within 30 days after receiving a notice of garnishment. A written
49 response must explain why the garnishee is not subject to garnishment and attachment. ~~Upon~~

50 Upon receipt of the a written response, the Department must contact the garnishee and
51 schedule a conference to discuss the response or inform the garnishee of the Department's

1 position concerning the response. If the Department does not agree with the garnishee on the
2 garnishee's liability, the Department may proceed to enforce the garnishee's liability for the tax
3 by sending the garnishee a notice of proposed assessment in accordance with G.S. 105-241.9.

4 (c) ~~Release. – When the Department releases a garnishee from liability, the Department~~
5 ~~must send the garnishee a letter of release. The letter must identify the taxpayer to whom the~~
6 ~~release applies and contain the identifying information about the taxpayer that is required under~~
7 ~~subsection (a) on a notice of garnishment.~~A notice of garnishment sent to a financial institution
8 is released when the financial institution complies with the notice. A notice of garnishment sent
9 to all other garnishees is released when the Department sends the garnishee a notice of release.
10 A notice of release must state the name and social security number or federal identification
11 number of the taxpayer to whom the release applies.

12 (d) Financial Institution. – As used in this section, the term 'financial institution' has the
13 same meaning as in G.S. 53B-2."

14 **SECTION 7.(j)** G.S. 53B-4(2) reads as rewritten:

15 "**§ 53B-4. Access to financial records.**

16 Notwithstanding any other provision of law, no government authority may have access to a
17 customer's financial record held by a financial institution unless the financial record is
18 described with reasonable specificity and access is sought pursuant to any of the following:

19 ...

20 (2) Authorization under ~~G.S. 105-254~~G.S. 105-242 or G.S. 105-258."

21 **SECTION 7.(k)** Subsection (h) of this section becomes effective January 1, 2011.

22 The remainder of this section is effective when it becomes law.

23
24 **EFFECTIVE DATE**

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