A BILL TO BE ENTITLED
AN ACT TO INCREASE THE STANDARD DEDUCTION, TO SIMPLIFY THE
FRANCHISE TAX BASE, TO LOWER THE FRANCHISE TAX RATE, TO REQUIRE
MARKETPLACE FACILITATORS TO COLLECT AND REMIT SALES AND USE TAX
ON MARKETPLACE FACILITATED SALES, AND TO MAKE OTHER TAX LAW
CHANGES.

The General Assembly of North Carolina enacts:

PART I. PERSONAL INCOME TAX CHANGES

SECTION 1.1.(a) G.S. 105-153.5(a)(1) reads as rewritten:
"(1) Standard deduction amount. – The standard deduction amount is zero for a

person who is not eligible for a standard deduction under section 63 of the

Code. For all other taxpayers, the standard deduction amount is equal to the

amount listed in the table below based on the taxpayer's filing status:

<table>
<thead>
<tr>
<th>Filing Status</th>
<th>Standard Deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Married, filing jointly/surviving spouse</td>
<td>$20,000</td>
</tr>
<tr>
<td>Head of Household</td>
<td>$15,000</td>
</tr>
<tr>
<td>Single</td>
<td>$10,000</td>
</tr>
<tr>
<td>Married, filing separately</td>
<td>$10,000</td>
</tr>
</tbody>
</table>

SECTION 1.1.(b) This section is effective for taxable years beginning on or after

January 1, 2021.

SECTION 1.2.(a) G.S. 105-153.5(a)(2)a. reads as rewritten:
"a. Charitable Contribution. – The amount allowed as a deduction for

charitable contributions under section 170 of the Code for that taxable

year. For taxable years beginning on or after 2014 through 2018, a

taxpayer who elected to take the income exclusion under section

408(d)(8) of the Code for a qualified charitable distribution from an

individual retirement plan by a person who has attained the age of 70

1/2 may deduct the amount that would have been allowed as a

charitable deduction under section 170 of the Code had the taxpayer

not elected to take the income exclusion."

SECTION 1.2.(b) G.S. 105-153.5(c2)(3) reads as rewritten:
"(3) For taxable years beginning on or after 2014 through 2018, the taxpayer

must add the amount excluded from the taxpayer's gross income for a qualified

charitable distribution from an individual retirement plan by a person who has

attained age 70 1/2 under section 408(d)(8) of the Code. The purpose of this
subdivision is to decouple from the income exclusion available under federal tax law."

SECTION 1.2.(c) This section is effective when it becomes law.

PART II. FRANCHISE TAX CHANGES

SECTION 2.1.(a) G.S. 105-120.2(b) reads as rewritten:

"(b) Tax Rate. – Every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the return is due, the greater of the following:

1. A franchise or privilege tax at the rate of one dollar and fifty cents ($1.50) set in G.S. 105-122(d2) 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 one hundred fifty thousand dollars ($150,000) nor less than two hundred dollars ($200.00).

2. If the tax calculated under this subdivision exceeds the tax calculated under subdivision (1) of this subsection, then the tax is levied at the rate of one dollar and fifty cents ($1.50) set in G.S. 105-122(d2) per one thousand dollars ($1,000) on the greater of the following: the total actual investment in tangible property in this State of such corporation as computed under G.S. 105-122(d). 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).

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

SECTION 2.1.(b) G.S. 105-122(d)(2) is repealed.

SECTION 2.1.(c) G.S. 105-122(d2) reads as rewritten:

"(d2) Tax Rate. – For an electric power company or a company that is a member of a qualified group, the tax rate is one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the company's tax base as determined under subsection (d) of this section. For purposes of this subsection, the term "electric power company" has the same meaning as defined in G.S. 105-130.4(s3) and the term "qualified group" means an affiliated group that has one or more members that is an electric power company.

For a C Corporation, For all other C Corporations, as defined in G.S. 105-130.2, the tax rate is one dollar and fifty cents ($1.50), one dollar and thirty cents ($1.30) per one thousand dollars ($1,000) of the corporation's tax base as determined under subsection (d) of this section. For an S Corporation, as defined in G.S. 105-130.2, the tax rate is two hundred dollars ($200.00) for the first one million dollars ($1,000,000) of the corporation's tax base as determined under subsection (d) of this section and one dollar and fifty cents ($1.50), one dollar and thirty cents ($1.30) per one thousand dollars ($1,000) of its tax base that exceeds one million dollars ($1,000,000).

In no event may the tax imposed by this section be less than two hundred dollars ($200.00)."

SECTION 2.1.(d) This section is effective for taxable years beginning on or after January 1, 2020, and applicable to the calculation of franchise tax reported on the 2019 and later corporate income tax returns.

SECTION 2.2.(a) G.S. 105-122(d2), as amended by Section 2.1(c) of this Part, reads as rewritten:

"(d2) Tax Rate. – For an electric power company or a company that is a member of a qualified group, the tax rate is one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the company's tax base as determined under subsection (d) of this section. For purposes of this subsection, the term "electric power company" has the same meaning as defined in
G.S. 105-130.4(s3) and the term "qualified group" means an affiliated group that has one or more members that is an electric power company.

For all other C Corporations, as defined in G.S. 105-130.2, the tax rate is one dollar and thirty cents ($1.30) per one thousand dollars ($1,000) of the corporation's tax base as determined under subsection (d) of this section. For purposes of this subsection, the term "electric power company" has the same meaning as defined in G.S. 105-130.4(s3) and the term "qualified group" means an affiliated group that has one or more members that is an electric power company.

For all other C Corporations, as defined in G.S. 105-130.2, the tax rate is two hundred dollars ($200.00) for the first one million dollars ($1,000,000) of the corporation's tax base as determined under subsection (d) of this section and one dollar and thirty cents ($1.30) per one thousand dollars ($1,000) of its tax base that exceeds one million dollars ($1,000,000).

In no event may the tax imposed by this section be less than two hundred dollars ($200.00)."

SECTION 2.2.(b) This section is effective for taxable years beginning on or after January 1, 2021, and applicable to the calculation of franchise tax reported on the 2020 and later corporate income tax returns.

SECTION 2.3.(a) G.S. 105-122(d2), as amended by Sections 2.1(c) and 2.2(a) of this Part, reads as rewritten:

"(d2) Tax Rate. – For an electric power company or a company that is a member of a qualified group, the tax rate is one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the company's tax base as determined under subsection (d) of this section. For purposes of this subsection, the term "electric power company" has the same meaning as defined in G.S. 105-130.4(s3) and the term "qualified group" means an affiliated group that has one or more members that is an electric power company.

For all other C Corporations, as defined in G.S. 105-130.2, the tax rate is one dollar ($1.00) per one thousand dollars ($1,000) of the corporation's tax base as determined under subsection (d) of this section. For purposes of this subsection, the term "electric power company" has the same meaning as defined in G.S. 105-130.4(s3) and the term "qualified group" means an affiliated group that has one or more members that is an electric power company.

For all other C Corporations, as defined in G.S. 105-130.2, the tax rate is two hundred dollars ($200.00) for the first one million dollars ($1,000,000) of the corporation's tax base as determined under subsection (d) of this section and one dollar ($1.00) per one thousand dollars ($1,000) of its tax base that exceeds one million dollars ($1,000,000).

In no event may the tax imposed by this section be less than two hundred dollars ($200.00)."

SECTION 2.3.(b) This section is effective for taxable years beginning on or after January 1, 2027, and applicable to the calculation of franchise tax reported on the 2026 and later corporate income tax returns.

PART III. USE MARKET-BASED SOURCING FOR MULTISTATE INCOME TAX APPORTIONMENT

SECTION 3.1. G.S. 105-130.4 reads as rewritten:

"§ 105-130.4. Allocation and apportionment of income for corporations.

... 

(i) (4) Sales Factor. – The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Notwithstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its apportionable income but is taxable in another state only because of nonapportionable income, all sales shall be treated as having been made in this State.

Receipts are in this State if the taxpayer's market for the receipts is in this State. If the market for a receipt cannot be determined, the state or states of assignment shall be reasonably approximated. In a case in which a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned through the use of a method of reasonable approximation, the receipts must be excluded from the denominator of a taxpayer's sales factor. Except as otherwise provided by this section, a taxpayer's market for receipts is in this State as provided below:
(1) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this State.

(2) In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this State. Sales of tangible personal property are in this State if the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.

(3) In the case of sale of tangible personal property, if and to the extent the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed is considered the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State constitutes delivery to the purchaser in this State. Other sales are in this State if any of the following occur:
   a. The receipts are from real or tangible personal property located in this State, and includes receipts from incidental services sold as part of, or in connection with, the sale of tangible personal property in this State.
   b. The receipts are from intangible property and are received from sources within this State.
   c. The receipts are from services and the income-producing activities are in this State. For the purposes of this subdivision, an "income-producing activity" means an activity directly performed by the taxpayer or its agents for the ultimate purpose of generating the sale of tangible personal property in this State. Receipts from income-producing activities performed within and without this State are attributed to this State in proportion to the income-producing activities performed in this State to total income-producing activities performed everywhere that generate the sale of service.

(4) In the case of sale of a service, if and to the extent the service is delivered to a location in this State.

(5) In the case of intangible property that is rented, leased, or licensed, if and to the extent the property is used in this State. Intangible property utilized in marketing a good or service to a consumer is "used in this State" if that good or service is purchased by a consumer who is in this State.

(6) In the case of intangible property that is sold, if and to the extent the property is used in this State. A contract right, government license, or similar intangible property that authorized the holder to conduct a business activity in a specific geographic area is "used in this State" if the geographic area includes all or part of this State. Receipts from a sale of intangible property that is contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of the intangible property as provided under subdivision (5) of this subsection. All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the sales factor.
General Assembly Of North Carolina

Session 2019

(1) Broadcasters. – A broadcaster's market for receipts is in this State as provided in G.S. 105-130.4A. For purposes of this section, the term "broadcaster" has the same meaning as defined in G.S. 105-130.4A.

(2) Banks. – A bank's market for receipts is in this State as provided in G.S. 105-130.4A. For purposes of this section, the term "bank" has the same meaning as defined in G.S. 105-130.4B.

(3) Electric Power Company. – All apportionable income of an electric power company shall be apportioned by a fraction, the numerator of which is the average value of the real and tangible personal property owned or rented and used in this State by the electric power company during the income year and the denominator of which is the average value of all the real and tangible personal property owned or rented and used by the electric power company during the income year. For purposes of this subsection, the term "electric power company" is a company, including any of its wholly owned noncorporate limited liability companies, primarily engaged in the business of supplying electricity for light, heat, current, or power to persons in this State and that is subject to control of one or more of the following entities: the North Carolina Utilities Commission or the Federal Energy Regulatory Commission.

For purposes of this subsection, the average value of real and tangible personal property owned or rented by an electric power company is determined as follows:

(1) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary may require the averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property.

(2) An electric power company that ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a merger, conversion, or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the electric power company's property.

(3) Property owned by an electric power company is valued at its original cost.

(4) Property rented by an electric power company is valued at eight times the net annual rental rate.

(5) Net annual rental rate is the annual rental rate paid by an electric power company less any annual rental rate received by the electric power company from sub-rentals except that sub-rentals shall not be deducted when they constitute apportionable income.

(6) Any property under construction and any property the income from which constitutes nonapportionable income shall be excluded from the computation of the average value of an electric power company's real and tangible personal property.

SECTION 3.2. Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-130.4A. Market-based sourcing for broadcasters.

(a) Definitions. – The definitions in G.S. 105-130.4 and the following definitions apply to this section:
Audience factor. – The factor determined by the ratio provided in this subdivision. The ratio is as follows:

   a. Television station. – The ratio that the viewing audience located in this State for a television station bears to the total viewing audience for a television station.

   b. Radio station. – The ratio that the listening audience in this State for a radio station bears to the total listening audience for a radio station.

   c. Cable or satellite program and channel broadcasts. – The ratio that the subscribers for a cable or satellite system located in this State bears to the total subscribers of a cable or satellite system. If the number of subscribers cannot be accurately determined from the books and records maintained by the taxpayer, the ratio shall be determined on the basis of the applicable year's subscription statistics located in published surveys, provided the source selected is consistently used from year to year for this purpose.

Broadcast. – The transmission of audio or video programming, directly or indirectly, to viewers and listeners by any other method of communication or combination of methods.

Broadcaster. – A person that provides audio or video programming to customers in this State by digital or analog means in exchange for one or more of the following: advertising receipts, subscriber fees, license, rent, or similar fees. The term includes a television or radio station licensed by the Federal Communications Commission, including network-owned or affiliated stations, a television or radio broadcast network, a cable program network, a distributor of audio or video programming, a cable system operator, and satellite system operator.

Gross receipts. – The same meaning as the term "sales" in G.S. 105-130.4.

Release or in release. – The placing of film or radio programming into service. A film or radio program is placed into service when it is first broadcast to the primary audience for entertainment, educational, commercial, artistic, or other purposes. Each episode of a television or radio series is placed in service when it is first broadcast. A program is not placed in service merely because it is completed and therefore in a condition or state of readiness and availability for broadcast or merely because it is previewed to prospective sponsors or purchasers.

Rent. – License fees or other payments or consideration provided in exchange for the broadcast or other use of television or radio programming.

Subscriber. – The individual residence or other outlet that is the ultimate recipient of the transmission of the audio or video programming.

Reasonable Approximation. – If the audience factor for a receipt cannot be determined, the state or states of assignment shall be reasonably approximated. If a taxpayer is delivering advertising or licensed content directly or indirectly to a known list of subscribers, the taxpayer shall reasonably approximate the receipts attributable to this State's market using a percentage that reflects the ratio of North Carolina subscribers to the total number of subscribers. If the taxpayer is delivering advertising or licensed content through an intermediary and does not have access to the list of subscribers, the taxpayer shall reasonably approximate the receipts attributable to this State's market using a percentage that reflects the ratio of the North Carolina population to the total population in the specific geographic area where the advertisement or licensed content is materially used. Unless the taxpayer provides substantial evidence to the contrary, the area where the advertisement or licensed content is materially used does not include areas outside the United States. If the taxpayer is able to show with substantial evidence that the
advertisement or licensed content is materially used in a city within a foreign country, then the
population of that city may be included in the population ratio calculation. If the taxpayer is able
to show with substantial evidence that the advertisement or license content is materially used
throughout a foreign country, then the population of that foreign country may be included in the
population ratio calculation. In a case where the specified rules of reasonable approximation fail
to reasonably approximate the percentage of receipts attributable to this State's market, the
Department may authorize an alternate approach that reflects an attempt to obtain the most
accurate assignment of receipts.

(c) Market for Receipts. — The receipts factor of a broadcaster is a fraction, the numerator
of which is the sum of the broadcaster's gross receipts from sources within the State and the
denominator of which is the sum of the broadcaster's gross receipts from transactions and activity
in the regular course of its trade or business everywhere. Advertising gross receipts and license
fees for audio or video programming in release are attributable to this State in accordance with
the audience factor in this State. Gross receipts from subscriber fees, rents, sales, or similar
charges from audio or video programming in release are attributable to this State based on the
amount of subscriber or other fees paid by customers in this State. A sale of audio or video
programming on tangible media is sourced to this State as sales of tangible personal property."

SECTION 3.3. Part 1 of Article 4 of Chapter 105 of the General Statutes is amended
by adding a new section to read:

§ 105-130.4B. Market-based sourcing for banks.

(a) Definitions. — The definitions in G.S. 105-130.4 apply to this section and the
following definitions apply to this section:

(1) Bank. — Defined in G.S. 105-130.7B.

(2) Billing address. — The location indicated in the books and records of the
taxpayer on the first day of the taxable year, or on the date in the taxable year
when the customer relationship began, as the address where any notice, statement, or billing relating to the customer's account is mailed.

(3) Borrower, cardholder, or payor located in this State. — A borrower, credit
cardholder, or payor whose billing address is in this State.

(4) Card issuer's reimbursement fee. — The fee a taxpayer receives from a
merchant's bank because one of the persons to whom the taxpayer has issued
a credit, debit, or similar type of card has charged merchandise or services to
the card.

(5) Credit card. — A card, or other means of providing information, that entitles
the holder to charge the cost of purchases, or a cash advance against a line of
credit.

(6) Debit card. — A card, or other means of providing information, that enables
the holder to charge the cost of purchases, or a cash withdrawal, against the
holder's bank account or a remaining balance on the card.

(7) Loan. — Any extension of credit resulting from direct negotiations between the
taxpayer and its customer, and/or the purchase, in whole or in part, of such an
extension of credit from another. The term includes participations, syndications, and leases treated as loans for federal income tax purposes.

(8) Loan secured by real property. — A loan or other obligation of which fifty
percent (50%) or more of the aggregate value of the collateral used to secure
the loan or other obligation, when valued at fair market value as of the time
the original loan or obligation was incurred, was real property.

(9) Merchant discount. — The fee, or negotiated discount, charged to a merchant
by the taxpayer for the privilege of participating in a program whereby a
credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the cardholder, net of any cardholder chargeback and
unreduced by any interchange transaction or issuer reimbursement fee paid to
another for charges or purchased made by its cardholder.

(10) Participation. – An extension of credit in which an undivided ownership
interest is held on a prorate basis in a single loan or pool of loans and related
collateral. In a loan participation, the credit originator initially makes the loan
and then subsequently resells all or a portion of it to other lenders. The
participation may or may not be known to the borrower.

(11) Payor. – The person who is legally responsible for making payment to the
taxpayer.

(12) Real property owned. – Real property (i) on which the taxpayer may claim
depreciation for federal income tax purposes, or (ii) to which the taxpayer
holds legal title and on which no other person may claim depreciation for
federal income tax purposes or could claim depreciation if subject to federal
income tax. Real property does not include coin, currency, or property
acquired in lieu of or pursuant to a foreclosure.

(13) Syndication. – An extension of credit in which two or more persons fund and
each person is at risk only up to a specified percentage of the total extension
of credit or up to a specified dollar amount.

(14) Tangible personal property owned. – Tangible personal property (i) on which
the taxpayer may claim depreciation for federal income tax purposes or (ii) to
which the taxpayer holds legal title and on which no other person may claim
depreciation for federal income tax purposes could claim depreciation if
subject to federal income tax. Tangible personal property does not include
coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(15) Transportation property. – Vehicles and vessels capable of moving under their
own power as well as any equipment or containers attached to such property.
Examples of transportation property include aircraft, trains, water vessels,
motor vehicles, rolling stock, barges, and trailers.

(b) General Rule. – The receipts factor of a bank is a fraction, the numerator of which is
the total receipts of the taxpayer in this State during the income year, and the denominator of
which is the total receipts of the taxpayer everywhere during the income year. The method of
calculating receipts for purposes of the denominator is the same as the method used in
determining receipts for purposes of the numerator. The receipts factor includes only those
receipts described herein that are apportionable income for the taxable year. Notwithstanding any
other provision under this Part, the receipts from the following are excluded from both the
numerator and the denominator of the receipts factor:

(1) Receipts from a casual sale of property.
(2) Receipts exempt from taxation.
(3) The portion of receipts realized from the sale or maturity of securities or other
obligations that represents a return of principal.
(4) Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a)
and (3b) and dividends excluded for federal tax purposes.
(5) The portion of receipts from financial swaps and other similar financial
derivatives that represent the notional principal amount that generates the cash
flow traded in the swap agreement.

(c) Receipts from the Sale, Lease, or Rental of Real Property. – The numerator of the
receipts factor includes receipts from the sale, lease, or rental of real property owned by the
taxpayer if the property is located within this State or receipts from the sublease of real property
if the property is located within this State.

(d) Receipts from the Sale, Lease, or Rental of Tangible Personal Property. – The method
for calculating receipts from the sale, lease, or rental of tangible personal property is as follows:
Tangible personal property. – Except as provided in subdivision (2) of this subsection, the numerator of the receipts factor includes receipts from the sale, lease, or rental of tangible personal property owned by the taxpayer if the property is located within this State when it is first placed in service by the lessee.

Transportation property. – Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this State. The extent an aircraft will be deemed to be used in this State and the amount of receipts that is to be included in the numerator of this State’s receipts factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this State and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this State cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

Interest, Fees, and Penalties from Loans Secured by Real Property. – The numerator of the receipts factor includes interest, fees, and penalties from loans secured by real property if the property is located within this State. If the property is located both within this State and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent (50%) of the fair market value of the real property is located within this State. If more than fifty percent (50%) of the fair market value of the real property is not located within any one state, then the receipts described in this subsection are included in the numerator of the receipts factor if the borrower is located in this State. The determination of whether the real property securing a loan is located within this State is made as of the time the original agreement was made and any and all subsequent substitutions of collateral are disregarded.

Interest, Fees, and Penalties from Loans Not Secured by Real Property. – The numerator of the receipts factor includes interest, fees, and penalties from loans not secured by real property if the borrower is located in this State.

Net Gains from the Sale of Loans. – The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans include income recorded under the coupon stripping rules of section 1286 of the Code. The amount of net gains from the sale of loans that is included in the numerator is determined as follows:

(1) Secured by real property. – The amount of net gains, but not less than zero, from the sale of loans secured by real property is determined by multiplying the net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (e) of this section, and the denominator of which is the total amount of interest, fees, and penalties from loans secured by real property.

(2) Not secured by real property. – The amount of net gains, but not less than zero, from the sale of loans not secured by real property is determined by multiplying the net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (f) of this section, and the denominator of which is the total amount of interest, fees, and penalties from loans not secured by real property.

Receipts from Interest, Fees, and Penalties from Cardholders. – The numerator of the receipts factor includes interest, fees, and penalties charged to credit, debit, or similar cardholders, including annual fees and overdraft fees, if the cardholder is located in this State.
(i) Receipts from ATM Fees. – The numerator of the receipts factor includes receipts from fees from the use of an ATM owned or rented by the taxpayer, if the ATM is located in this State. The receipts factor includes all ATM fees that are not forwarded directly to another bank. Receipts from ATM fees that are not sourced under this subsection are sourced pursuant to subsection (l) of this section.

(j) Net Gains from the Sale of Credit Card Receivables. – The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (h) of this section, and the denominator of which is the taxpayer's total amount of interest, fees, and penalties charged to cardholders.

(k) Miscellaneous Receipts. – The numerator of the receipts factor includes all of the following:

1. Card issuer's reimbursement fees. – Receipts from card issuer's reimbursement fees if the payor is located in this State.
2. Receipts from merchant's discount. – Receipts from a merchant discount if the payor is located in this State.
3. Loan servicing fees. – Receipts from loan servicing fees if the payor is located in this State.
4. Receipts from services. – Receipts from services not otherwise apportioned under this section if the payor is located in this State.
5. Receipts from investment assets and activity and trading assets and activity. – Receipts from one or more of the following:
   a. Interest and dividends from investment assets and activities and trading assets and activities if the payor is located in this State.
   b. Net gains and other income, but not less than zero, from investment assets and activities and trading assets and activities multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to sub-subdivision a. of this subdivision, and the denominator of which is the taxpayer's total amount of interest and dividends from investment assets and activities and trading assets and activities.

(l) All Other Receipts. – All other receipts not specifically enumerated in this section are included in the numerator of the receipts factor if the payor is located in this State."

SECTION 3.4. The Utilities Commission shall adjust the rates for public utilities, excluding water public utilities with less than two hundred thousand dollars ($200,000) in annual operating revenues, for the tax changes in Section 3.1 of this Part. Each utility shall calculate the cumulative net effect of the tax changes and file the calculations with proposed rate changes to reflect the net prospective tax changes in utility customer rates within 60 days of the enactment of this act. Any adjustments required to existing tax assets or liabilities reflected in the utility's books and records required by the tax changes shall be deferred and reflected in customer rates in either the utility's next rate case or earlier if deemed appropriate by the Commission.

SECTION 3.5. Under Section 38.4 of S.L. 2016-94, the Department of Revenue adopted and submitted to the Rules Review Commission rules regarding the implementation and administration of market-based sourcing principles based on legislation proposed in that section. The Department adopted the rules on January 4, 2017, and submitted the rules to the Rules Review Commission on January 18, 2017. The Rules Review Commission approved the rules and delivered to the Codifier of Rules on February 16, 2017. Pursuant to Section 38.4(b) of S.L. 2016-94, the Codifier of Rules did not enter the rules into the Administrative Code. The Codifier of Rules is hereby directed by the General Assembly to enter the rules into the Administrative Code on the effective date of this act, and the rules apply to taxable years beginning on or after January 1, 2020.
SECTION 3.6. Sections 3.1 through 3.3 of this Part are effective for taxable years beginning on or after January 1, 2020. The remainder of this Part is effective when it becomes law.

PART IV. MARKETPLACE FACILITATORS TO COLLECT SALES TAX

SECTION 4.1.(a) G.S. 105-164.3 reads as rewritten:

"§ 105-164.3. Definitions.
The following definitions apply in this Article:

... (20a) Marketplace. – A physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items, the delivery of or first use of which is sourced to this State.

(20b) Marketplace facilitated sale. – The sale of an item by a marketplace facilitator on behalf of a marketplace seller that occurs through a marketplace.

(20c) Marketplace facilitator. – A person that, directly or indirectly and whether through one or more affiliates, does both of the following:

a. Lists or otherwise makes available for sale a marketplace seller’s items through a marketplace owned or operated by the marketplace facilitator.

b. Does one or more of the following:

1. Collects the sales price or purchase price of a marketplace seller’s items or otherwise processes payment.

2. Makes payment processing services available to purchasers for the sale of a marketplace seller’s items.

3. Transmits the offer or acceptance for the sale of the items.

(20d) Marketplace seller. – A person that sells or offers to sell items through a marketplace regardless of any of the following:

a. Whether the person has a physical presence in this State.

b. Whether the person is registered as a retailer in this State.

c. Whether the person would have been required to collect and remit sales and use tax had the sales not been made through a marketplace.

d. Whether the person would not have been required to collect and remit sales and use tax had the sales not been made through a marketplace.

..."

SECTION 4.1.(b) G.S. 105-164.8(b) reads as rewritten:

"(b) Remote Sales. – A retailer who makes a remote sale is engaged in business in this State and is subject to the tax levied under this Article if at least one of the following conditions is met:

... (3) The retailer solicits or transacts business in this State by employees, independent contractors, agents, or other representatives, whether the remote sales thus subject to taxation by this State result from or are related in any other way to the solicitation or transaction of business. A retailer is presumed to be soliciting or transacting business by an independent contractor, agent, or other representative if the retailer enters into an agreement with a resident of this State under which the resident, person, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet Web site or otherwise, to the retailer. This presumption applies only if the cumulative gross receipts from sales by the retailer to purchasers in this State who are referred to the retailer by all residents, persons with this type of agreement with the retailer is in excess of ten thousand dollars
(§10,000) during the preceding four quarterly periods. This presumption may be rebutted by proof that the resident person with whom the retailer has an agreement did not engage in any solicitation in the State on behalf of the seller that would satisfy the nexus requirement of the United States Constitution during the four quarterly periods in question.

…

(9) The retailer, with respect to retailer makes remote sales into North Carolina sourced to this State, including sales as a marketplace seller, for the previous or the current calendar year, had one or more year that meet either of the following:

a. Gross sales in excess of one hundred thousand dollars ($100,000).

b. Two hundred or more separate transactions.

(10) The retailer is a marketplace facilitator that makes sales, including all marketplace facilitated sales for all marketplace sellers, sourced to this State for the previous or the current calendar year that meet either of the following:

a. Gross sales in excess of one hundred thousand dollars ($100,000).

b. Two hundred or more separate transactions.”

SECTION 4.1. Part 2 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

§ 105-164.4J. Marketplace facilitated sales.

(a) Scope. — This section applies to a marketplace facilitator that makes sales, including all marketplace facilitated sales for all marketplace sellers, sourced to this State for the previous or the current calendar year that meet either of the following:

(1) Gross sales in excess of one hundred thousand dollars ($100,000).

(2) Two hundred or more separate transactions.

(b) Payment of Tax. — A marketplace facilitator that meets the threshold in subsection (a) of this section is considered the retailer of each marketplace facilitated sale it makes and is liable for collecting and remitting the sales and use tax on all such sales. A marketplace facilitator is required to comply with the same requirements and procedures as all other retailers registered or who are required to be registered to collect and remit sales and use tax in this State. A marketplace seller shall treat a sale made through a marketplace facilitator that is subject to the provisions of this section as a wholesale sale. A marketplace facilitator is required to collect and remit sales tax as required by this section regardless of whether a marketplace seller for whom it makes a marketplace facilitated sale meets any of the following conditions:

(1) Has a physical presence in this State.

(2) Is required to be registered to collect and remit sales and use tax in this State.

(3) Would have been required to collect and remit sales and use tax in this State had the sale not been made through a marketplace.

(4) Would not have been required to collect and remit sales and use tax in this State had the sale not been made through a marketplace.

(c) Report. — A marketplace facilitator must report to each marketplace seller for whom it makes marketplace facilitated sales, the gross sales sourced to this State and the number of separate transactions sourced to this State made on behalf of the marketplace seller. The report shall be made no later than 10 days after the end of each calendar month.

(d) Refund of Tax. — If a purchaser receives a refund on any portion of the sales price from a marketplace facilitator who collected and remitted the tax on the retail sale, the provisions of G.S. 105-164.11A(a) apply.

(e) Class Actions. — No class action may be brought against a marketplace facilitator in any court of this State on behalf of customers arising from or in any way related to an overpayment of sales or use tax collected on facilitated sales by a marketplace facilitator.
regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection affects a customer's right to seek a refund as provided under G.S. 105-164.11.

(f) Agreements. – Nothing in this section shall be construed to interfere with the ability of a marketplace facilitator and a marketplace seller to enter into an agreement with each other regarding the fulfillment of the requirements of this Article, except that an agreement may not require a marketplace seller to collect and remit sales and use tax on marketplace facilitated sales.

(g) Use Tax Obligation. – Nothing in this section affects the obligation of any purchaser to remit use tax for any taxable transaction for which a marketplace facilitator does not collect and remit sales or use tax.

(h) Limitation. – This section does not apply to an accommodation facilitator, an admission facilitator, or a service contract facilitator whose collection and remittance requirements are set out in G.S. 105-164.4F, 105-164.4G, and 105-164.4I, respectively."

SECTION 4.1.(d) G.S. 105-237.1(a) reads as rewritten:

"(a) Authority. – The Secretary may compromise a taxpayer's liability for a tax that is collectible under G.S. 105-241.22 when the Secretary determines that the compromise is in the best interest of the State and makes one or more of the following findings:

…

(8) A marketplace facilitator can show to the satisfaction of the Secretary that the failure to collect the correct amount of tax was due to incorrect information given to the marketplace facilitator by a marketplace seller."

SECTION 4.2.(a) G.S. 105-164.3 reads as rewritten:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

(1) Accommodation. – A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.

(1a) Accommodation facilitator. – A person that contracts, either directly or indirectly, with a provider of an accommodation to do, either directly or indirectly, one or more of the activities listed in this subdivision. The term includes a real estate broker as defined in G.S. 93A-2. The activities are:

a. Market the accommodation and accept payment or collect credit card or other payment information for the rental of the accommodation.

b. List the accommodation for rental on a forum, platform, or other application for a fee or other consideration.

…"

SECTION 4.2.(b) G.S. 105-164.4F reads as rewritten:

"§ 105-164.4F. Accommodation rentals.

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

(1) Accommodation. – A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.

(2) 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.

(3) Rental agent. – The term includes a real estate broker, as defined in G.S. 93A-2.

(b) Tax. – The gross receipts derived from the rental of an accommodation are taxed at the general rate set in G.S. 105-164.4. 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 made by a an accommodation facilitator includes charges designated as facilitation fees, service fees, listing fees, and any other charges necessary to complete the rental.
(b1) Retailer. – For purposes of the tax imposed by this section, the retailer is the applicable person listed below. The liability of an accommodation facilitator for the tax imposed by this section relieves the provider of the accommodation from liability. The retailer is:

(1) The provider of the accommodation if the provider of the accommodation does any of the following with respect to the rental of the accommodation:
   a. Collects payment for the accommodation at the time of the reservation.
   b. Collects payment for the accommodation at the time the consumer occupies or has the right to occupy the accommodation.
   c. Contracts with an accommodation facilitator that makes the reservation and collects credit card or other payment information at the time of the reservation but does not collect payment for the accommodation at the time of the reservation.

(2) The accommodation facilitator if the accommodation facilitator collects payment or a deposit for the accommodation at the time of the reservation.

(c) Accommodation Facilitator Transactions. – For a transaction in which the rental of an accommodation is made by an accommodation facilitator but the provider of the accommodation is considered the retailer, the following provisions apply:

(1) An accommodation facilitator must report to the retailer with whom it has a contract the sales price a consumer pays to the facilitator for an accommodation marketed made by the accommodation facilitator.

(2) A retailer must notify an accommodation facilitator when an accommodation rental is completed, and the accommodation facilitator must send the retailer the portion of the sales price the accommodation facilitator owes the retailer and the tax due on the sales price no later than 10 days after the end of each calendar month.

(3) An accommodation facilitator that does not send the retailer the tax due on the sales price is liable for the amount of tax the accommodation facilitator fails to send. An accommodation 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 an accommodation facilitator are held in trust by the retailer for remittance to the Secretary.

(4) A retailer that receives a tax payment from an accommodation facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from an accommodation facilitator.

(5) The requirements imposed by this section on a retailer and an accommodation facilitator are considered terms of the contract between the retailer and the accommodation facilitator.

(c1) Accommodation Facilitator Report. – An accommodation facilitator must file with the Secretary an annual report by March 31 of each year for the prior calendar year for accommodation rentals for which it is not considered the retailer under subsection (b1) of this section. The annual report must be provided in electronic format and include the property owner’s name, property owner’s mailing address, physical location of the accommodation, rental activity detail, available gross receipt information for rentals, and any other information deemed necessary by the Secretary.

(d) Rental Agent. – 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 section. The liability of a rental agent for the tax imposed by this section relieves the provider of the accommodation from liability.

(e) Exemptions. – The tax imposed by this section does not apply to the following:
A private residence, cottage, or similar accommodation that is rented for fewer than 15 days in a calendar year other than a private residence, cottage, or similar accommodation listed with a real estate broker or agent unless the accommodation is rented by an accommodation facilitator that is considered the retailer under subsection (b1) of this section.

(2) An accommodation supplied to the same person for a period of 90 or more continuous days.

(3) 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.

SECTION 4.3.(a) G.S. 105-164.3 reads as rewritten:

§ 105-164.3. Definitions.
The following definitions apply in this Article:

…

(1b) Admission charge. – Gross receipts derived for the right to attend an entertainment activity. The term includes a charge for a single ticket, a multi-occasion ticket, a seasonal pass, and an annual pass; a membership fee that provides for admission; a cover charge; a surcharge; a convenience fee, a processing fee, a facility charge, a facilitation fee, or similar charge; or any other charges included in gross receipts derived from admission.

(1c) Admission facilitator. – A person who accepts payment of an admission charge to an entertainment activity and who is not the operator of the venue where the entertainment activity occurs.

…

(1f) Amenity. – A feature that increases the value or attractiveness of an entertainment activity that allows a person access to items that are not subject to tax under this Article and that are not available with the purchase of admission to the same event without the feature. The term includes parking privileges, special entrances, access to areas other than general admission, mascot visits, and merchandise discounts. The term does not include any charge for food, prepared food, and alcoholic beverages subject to tax under this Article.

…

(9a) Entertainment activity. – An activity listed in this subdivision:

a. A live performance or other live event of any kind, the purpose of which is for entertainment.

b. A movie, motion picture, or film.

c. A museum, a cultural site, a garden, an exhibit, a show, or a similar attraction.

d. A guided tour at any of the activities listed in sub-subdivision c. of this subdivision.

…"
(2) Amenity.—A feature that increases the value or attractiveness of an entertainment activity that allows a person access to items that are not subject to tax under this Article and that are not available with the purchase of admission to the same event without the feature. The term includes parking privileges, special entrances, access to areas other than general admission, mascot visits, and merchandise discounts. The term does not include any charge for food, prepared food, and alcoholic beverages subject to tax under this Article.

(3) Entertainment activity.—An activity listed in this subdivision:
   a. A live performance or other live event of any kind, the purpose of which is for entertainment.
   b. A movie, motion picture, or film.
   c. A museum, a cultural site, a garden, an exhibit, a show, or a similar attraction.
   d. A guided tour at any of the activities listed in sub-subdivision c. of this subdivision.

(4) Facilitator.—A person who accepts payment of an admission charge to an entertainment activity and who is not the operator of the venue where the entertainment activity occurs.

(b) Tax.—The gross receipts derived from an admission charge to an entertainment activity are taxed at the general rate set in G.S. 105-164.4. The tax is due and payable by the retailer in accordance with G.S. 105-164.16. For purposes of the tax imposed by this section, the retailer is the applicable person listed below:
   (1) The operator of the venue where the entertainment activity occurs, unless the retailer and the admission facilitator have a contract between them allowing for dual remittance, as provided in subsection (d) of this section.
   (2) The person that provides the entertainment and that receives admission charges directly from a purchaser.
   (3) A person other than a person listed in subdivision (1) or (2) of this subsection that receives gross receipts derived from an admission charge sold at retail.

(c) Admission Facilitator.—An admission facilitator must report to the retailer with whom it has a contract the admission charge a consumer pays to the admission facilitator for an entertainment activity. The admission facilitator must send the retailer the portion of the gross receipts the admission facilitator owes the retailer and the tax due on the gross receipts derived from an admission charge no later than 10 days after the end of each calendar month. An admission facilitator that does not send the retailer the tax due on the gross receipts derived from an admission charge is liable for the amount of tax the admission facilitator fails to send to the retailer. An admission 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 an admission facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from an admission facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from an admission facilitator. The requirements imposed by this subsection on a retailer and an admission facilitator are considered terms of the contract between the retailer and the admission facilitator.

(d) Dual Remittance.—The tax due on the gross receipts derived from an admission charge may be partially reported and remitted to the operator of the venue for remittance to the Department and partially reported and remitted by the admission facilitator directly to the Department. An admission facilitator that elects to remit tax under the dual remittance option is required to obtain a
certificate of registration in accordance with G.S. 105-164.29. A–An admission facilitator is subject to the provisions of Article 9 of this Chapter.

SECTION 4.4.(a) G.S. 105-164.3 reads as rewritten:

"§ 105-164.3. Definitions.
The following definitions apply in this Article:

(38c) Service contract facilitator. – A person who contracts with the obligor of a service contract to market the service contract and accepts payment from the purchaser for the service contract.

SECTION 4.4.(b) G.S. 105-164.4I reads as rewritten:

"§ 105-164.4I. Service contracts.
(a) Tax. – The sales price of or the gross receipts derived from a service contract or the renewal of a service contract sold at retail is subject to the general rate of tax set in G.S. 105-164.4 and is sourced in accordance with the sourcing principles in G.S. 105-164.4B. The retailer of a service contract is required to collect the tax due at the time of the retail sale of the contract and is liable for payment of the tax. The tax is due and payable in accordance with G.S. 105-164.16.

The retailer of a service contract is the applicable person listed below:

(1) When a service contract is sold at retail to a purchaser by the obligor under the contract, the obligor is the retailer.

(2) When a service contract is sold at retail to a purchaser by a service contract facilitator on behalf of the obligor under the contract, the service contract facilitator is the retailer unless the provisions of subdivision (3) of this subsection apply.

(3) When a service contract is sold at retail to a purchaser by a service contract facilitator on behalf of the obligor under the contract and there is an agreement between the service contract facilitator and the obligor that states the obligor will be liable for the payment of the tax, the obligor is the retailer. The service contract facilitator must send the retailer the tax due on the sales price of or gross receipts derived from the service contract no later than 10 days after the end of each calendar month. A service contract facilitator that does not send the retailer the tax due on the sales price or gross receipts is liable for the amount of tax the service contract facilitator fails to send. A service contract 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 service contract facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a service contract facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a service contract facilitator. The requirements imposed by this subdivision on a retailer and a service contract facilitator are considered terms of the agreement between the retailer and the service contract facilitator.

(e) Definition. – For purposes of this section, the term "facilitator" means a person who contracts with the obligor of the service contract to market the service contract and accepts payment from the purchaser for the service contract.

SECTION 4.5.(a) G.S. 105-164.22 reads as rewritten:

"§ 105-164.22. Record-keeping. Recordkeeping requirements, inspection authority, and effect of failure to keep records.
(a) Recordkeeping Generally. – Retailers, wholesale merchants, facilitators, real property contractors, and consumers must keep records that establish their tax liability under this Article. The Secretary or a person designated by the Secretary may inspect these records at any reasonable time during the day.

(b) Retailers. – A retailer’s records must include records of the retailer’s gross income, gross sales, net taxable sales, all items purchased for resale, resale, and any reports or records related to transactions with a facilitator with whom it has a contract as provided in this Article. Failure of a retailer to keep records that establish that a sale is exempt under this Article subjects the retailer to liability for tax on the sale.

(c) Wholesale Merchants. – A wholesale merchant's records must include a bill of sale for each customer that contains the name and address of the purchaser, the date of the purchase, the item purchased, and the sales price at which the wholesale merchant sold the item. A wholesale merchant must also keep records that establish a sale is exempt from tax and any reports or records related to transactions with a facilitator with whom it has a contract as provided in this Article. Failure of a wholesale merchant to keep these records for the sale of an item that establish a sale is exempt from tax under this Article subjects the wholesale merchant to liability for tax at the rate that applies to the retail sale of the item.

(d) Facilitators. – A facilitator’s records must include records of the facilitator’s gross income, gross sales, net taxable sales, all items purchased for resale, any reports or records related to transactions with a retailer with which it has a contract as provided in this Article, and any other records that establish its tax liability. Failure of a facilitator to keep records that establish a sale is exempt from tax under this Article subjects the facilitator to liability for tax on the sale.

(e) Real Property Contractors. – A real property contractor's records must include substantiation that a transaction is a real property contract or a mixed transaction contract pursuant to G.S. 105-164.4H(a1). Failure of a real property contractor to keep records that establish a real property contract under this Article subjects the real property contractor to liability for tax on the sale.

(f) Consumers. – A consumer’s records must include an invoice or other statement of the purchase price of an item the consumer purchased from inside or outside the State. State and any sales and use tax paid thereon. Failure of the consumer to keep these records subjects the consumer to liability for tax on the purchase price of the item, as determined by the Secretary."

SECTION 4.5.(b) G.S. 105-164.3, as amended by Section 1 of this Part, reads as rewritten:

§ 105-164.3. Definitions.

The following definitions apply in this Article:

…

(4d)(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, an item, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, an item, person, business, or organization. As used in this subdivision, “product” means tangible personal property, digital property, or a service.

(1e) Affiliate. – Defined in G.S. 105-130.2.

…

(4a)(1g) 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.

(4b)(1h) 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.

(4f)(1i) Audio work. – A series of musical, spoken, or other sounds, including a ringtone.

(4g)(1j) Audiovisual work. – A series of related images and any sounds accompanying the images that impart an impression of motion when shown in succession.

(4h)(1k) Aviation gasoline. – Defined in G.S. 105-449.60.

(4i)(1l) Bundled transaction. – A retail sale of two or more distinct and identifiable products, items, at least one of which is taxable and one of which is nontaxable, for one nonitemized price. The term does not apply to real property and or services to real property. Products, items 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, item. 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, items whose combined price varies, or is negotiable, depending on the products, items 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.

(4e)(1m) 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.

(4m)(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.

(2c) Capital improvement. – One or more of the following:

k. An addition or alteration to real property that is permanently affixed or installed to real property and is not an activity listed in subdivision (33)(33m) of this section as repair, maintenance, and installation services.

(9) Engaged in business. – Any of the following:

a. Maintaining, occupying, or using permanently or temporarily, directly or indirectly, through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room, warehouse or storage place, or other place of business for selling or delivering tangible personal property, digital property, or a service for storage, use, or consumption in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, sales representative, marketplace facilitator subject to the requirements of G.S. 105-164.4J, or solicitor operating or transacting business by mobile phone application or other applications in this State in the selling or delivering. The fact that any corporate retailer, agent, or subsidiary engaged in business in
this State may not be legally domesticated or qualified to do business in this State is immaterial.

... 

(9e) Facilitator. – An accommodation facilitator, an admission facilitator, or a service contract facilitator.

... 

(20b)(20e) Mixed transaction contract. – A contract that includes both a real property contract for a capital improvement and repair, maintenance, and installation services for real property that are not related to the capital improvement.

... 

(33j) Remote sale. – A sale of tangible personal property or digital property an item ordered by mail, by telephone, via the Internet, mobile phone application, or by another similar method, to a purchaser who is in this State at the time the order is remitted, from a method by a retailer who receives the order in another state and delivers the property item or makes it accessible to a person in this State or causes it to be delivered or made accessible to a person in this State, or performs a service sourced to this State. It is presumed that a resident of this State who remits makes an order was in this State at the time the order was remitted made.

... 

(33m) Repair, maintenance, and installation services. – The term includes the activities listed in this subdivision and applies to tangible personal property, motor vehicle, vehicles, certain digital property, and real property. The term does not include a service used to fulfill a real property contract taxed in accordance with G.S. 105-164.4H. The included activities are:

... 

(35) Retailer. – Any of the following persons:

a. A person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property, digital property for storage, use, or consumption in this State, or services items sourced to this State. When the Secretary finds it necessary for the efficient administration of this Article to regard any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these dealers, distributors, consignors, supervisors, employers, or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers, or persons as "retailers" for the purpose of this Article.

b. A person, other than a real property contractor, engaged in business of delivering, erecting, installing, or applying tangible personal property or digital property for use in this State.

c. A person engaged in business of making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met.
d. A person, other than a facilitator, person required to collect the State tax levied under this Article or the local taxes levied under Subchapter VIII of this Chapter and under Chapter 1096 of the 1967 Session Laws.

e. A marketplace facilitator that is subject to the requirements of G.S. 105-164.4J or a facilitator that is required to collect and remit the tax under this Article.

SECTION 4.6. There is no obligation to collect the sales and use tax required by this Part retroactively.

SECTION 4.7. If any provision of this Part, or the application of any provision to a person or circumstance, is held to be unconstitutional, then the remainder of this Part, and the application of the provisions to any person or circumstance, shall not be affected thereby.

SECTION 4.8. The Revisor of Statutes is authorized to renumber the subdivisions of G.S. 105-164.3 to ensure that the subdivisions are listed in alphabetical order and in a manner that reduces the current use of alphanumeric designations, to make conforming changes, and to reserve sufficient space to accommodate future additions to the statutory section.

SECTION 4.9. This Part becomes effective September 1, 2019, and applies to sales occurring on or after that date.

PART V. OTHER BUSINESS TAX CHANGES

SECTION 5.1.(a) G.S. 105-130.5(b) reads as rewritten:

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

…

(31) To the extent included in federal taxable income, the amount received by a taxpayer as an economic incentive pursuant to G.S. 143B-437.012 or Part 2G or 2H of Article 10 of Chapter 143B of the General Statutes."

SECTION 5.1.(b) G.S. 105-153.5(b) reads as rewritten:

"(b) Other Deductions. – In calculating North Carolina taxable income, a taxpayer may deduct from the taxpayer's adjusted gross income any of the following items that are included in the taxpayer's adjusted gross income:

…

(14) The amount received by a taxpayer as an economic incentive pursuant to G.S. 143B-437.012 or Part 2G or 2H of Article 10 of Chapter 143B of the General Statutes."

SECTION 5.1.(c) This section is effective for taxable years beginning on or after January 1, 2019, and applies to amounts received by a taxpayer pursuant to an economic incentive agreement entered into on or after that date.

SECTION 5.2. G.S. 105-129.110 reads as rewritten:

"§ 105-129.110. Sunset.

This Article expires for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2020, January 1, 2024. For qualified rehabilitation expenditures and rehabilitation expenses incurred prior to January 1, 2020, January 1, 2024, this Article expires for property not placed in service by January 1, 2028, January 1, 2032."

SECTION 5.3.(a) G.S. 105-164.13(11b) reads as rewritten:

"(11b) Sales of aviation gasoline and jet fuel to an interstate air business for use in a commercial aircraft. For purposes of this subdivision, the term "commercial aircraft" has the same meaning as defined in subdivision (45a) of this section. This exemption also applies to aviation gasoline and jet fuel purchased for use in a commercial aircraft in interstate or foreign commerce by a person whose
primary business is scheduled passenger air transportation. This subdivision expires January 1, 2024.

SECTION 5.3.(b) G.S. 105-164.13(65) and (65a) read as rewritten:
"(65) This subdivision expires January 1, 2024. Sales of the following to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series:

a. The sale, lease, or rental of an engine.

b. The sales price of or gross receipts derived from a service contract on, or repair, maintenance, and installation services for, a transmission, an engine, rear-end gears, and any other item that is purchased, leased, or rented and that is exempt from tax under this subdivision or that is allowed a sales tax refund under G.S. 105-164.14A(a)(5).

c. The gross receipts derived from an agreement to provide an engine to a professional motorsports racing team or related member of a team for use in competition in a sanctioned race series, where such agreement does not meet the definition of a "service contract" as defined in G.S. 105-164.3 but may meet the definition of the term "lease or rental" as defined in G.S. 105-164.3.

(65a) An engine or a part to build or rebuild an engine for the purpose of providing an engine under an agreement to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series. This subdivision expires January 1, 2024.

SECTION 5.3.(c) G.S. 105-164.14A(a)(4) and (a)(5) read as rewritten:
"(4) Motorsports team or sanctioning body. – A professional motorsports racing team, a motorsports sanctioning body, or a related member of such a team or body is allowed a refund of the sales and use tax paid by it in this State on aviation gasoline or jet fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this subdivision, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. This subdivision is repealed for purchases made on or after January 1, 2024.

(5) Professional motorsports team. – A professional motorsports racing team or a related member of a team is allowed a refund of fifty percent (50%) of the sales and use tax paid by it in this State on tangible personal property, other than tires or accessories, that comprises any part of a professional motorsports vehicle. For purposes of this subdivision, "motorsports accessories" includes instrumentation, telemetry, consumables, and paint. This subdivision is repealed for purchases made on or after January 1, 2024.

SECTION 5.4. Except as otherwise provided, this Part is effective when it becomes law.

PART VI. FACILITATE RESPONSE TO DISASTERS
SECTION 6.1. Part 8 of Article 166A of the General Statutes is amended by adding a new section to read:
"§ 166A-19.70A. Tax and business relief for critical infrastructure businesses and employees during a disaster response period.

(a) Purpose. – The State finds that it is appropriate to exempt from certain State laws businesses and employees who come from out-of-state to provide temporary resources and personnel to assist in disaster-related work related to critical infrastructure in response to a disaster declaration.
(b) Definitions. – In addition to the definitions in G.S. 166A-19.3, the following definitions apply in this section:

(1) Critical infrastructure. – Property and equipment owned or used by a critical infrastructure company for utility or communications transmission services to the public in the State. Examples of critical infrastructure include communications networks, electric generation, transmission and distribution systems, natural gas transmission and distribution systems, water pipelines, and related support facilities. Related support facilities may include buildings, offices, lines, poles, pipes, structures, and equipment.

(2) Critical infrastructure company. – One of the following:
   a. A registered public communications provider.
   b. A registered public utility.

(3) Disaster-related work. – Repairing, renovating, installing, building, or performing services on critical infrastructure that has been damaged, impaired, or destroyed as a result of a disaster or emergency in an area covered by the disaster declaration.

(4) Disaster response period. – A period that begins ten days prior to the first day of a disaster declaration and extends for 60 days following the expiration of the disaster declaration.

(5) Out-of-state business. – A person that, except with regard to the performance of disaster-related work, meets all of conditions of this subdivision. The term may include an affiliate or subsidiary of a critical infrastructure company. The conditions are as follows:
   a. Has no physical presence in the State.
   b. Does not conduct business operations in this State.
   c. Is not registered with any State agency to conduct business in the State.
   d. Has not been required to file any tax returns with the State for three years prior to the disaster response period, other than those arising from the performance of disaster-related work during a tax year prior to the enactment of this section.

(6) Out-of-state employee. – A nonresident who is an employee of an out-of-state business entitled to relief under subsection (c) of this section or a nonresident employee of a critical infrastructure company temporarily in the State to perform disaster-related work during the disaster response period. The term does not include a nonresident who otherwise works in this State.

(7) Registered public communications provider. – A person registered to conduct business in this State prior to the disaster declaration that provides the transmission to the public of one or more of the following:
   a. Broadband.
   b. Mobile telecommunications.
   c. Telecommunications.
   d. Wireless Internet access.

(8) Registered public utility. – A person registered to conduct business in this State prior to the disaster declaration that is subject to control of one or more of the following entities:
   b. Federal Communications Commission.

(c) State Relief for Out-of-State Business. – An out-of-state business performing disaster-related work in this State during a disaster response period at the request of a critical
infrastructure company is not considered to be conducting business in this State, and as such is exempt from the following statutory requirements:

1. Franchise tax, as provided under G.S. 105-125.
2. Income tax, as provided under G.S. 105-130.11.
3. S-corporation income tax, as provided under G.S. 105-131.7.
4. Information returns, as provided under G.S. 105-154(a).
5. Unemployment tax, as provided under G.S. 96-9.2.
7. Registration with the Secretary of State to transact business in this State, as provided under G.S. 55-1-51.

(d) State Relief for Out-of-State Employee. – An out-of-state employee is not required to pay State income tax, or file an income tax return, on earnings received for disaster-related work performed during a disaster response period, as provided in G.S. 105-153.4(f) and G.S. 105-153.8(a)(2). The employer of an out-of-state employee is not required to withhold income tax from the wages of the employee, as provided in G.S. 105-163.2(f).

(e) Notification. – A critical infrastructure company that requests an out-of-state business to perform disaster-related work in this State during the disaster response period must notify the State Emergency Response Team within 30 business days of the out-of-state business’s entry into the State of the business’s presence in the State. The notification must include the contact information of the critical infrastructure company that requested the presence of the out-of-state business as well as the following information about the out-of-state business: name, state of domicile, principal business address, federal tax identification number, date of entry, and any other information required by the State Emergency Response Team. The State Emergency Response Team must disseminate the information to the appropriate State agencies. Failure of the critical infrastructure company to provide this information in a timely manner does not invalidate the relief provided by this section so long as the company provides it to the appropriate State agency upon request.

(f) Limitation. – The exemptions from the State laws provided by this section cease to apply when the disaster response period expires. An out-of-state business or out-of-state employee that remains in the State after the disaster response period expires must abide by all State and local registration, license, and filing requirements that apply to any other out-of-state business and out-of-state employee doing business in this State."

SECTION 6.2.(a) Article 1 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"§ 55-1-51. Exemption for disaster relief.

(a) Critical Infrastructure. – In accordance with the policy established in G.S. 166A-19.70A, an out-of-state business performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not required to obtain a certificate of authority from the Secretary of State as otherwise required under G.S. 55-15-01.

(b) Motor Fuel. – A person issued a temporary license by the Department of Revenue under G.S. 105-449.69A to import, export, distribute, or transport motor fuel in this State in response to a disaster declaration is not required to obtain a certificate of authority from the Secretary of State to transact business in this State for the duration of the temporary license."

SECTION 6.2.(b) G.S. 96-9.2(a) reads as rewritten:

"(a) Required Contribution. – An employer is required to make a contribution in each calendar year to the Unemployment Insurance Fund in an amount equal to the applicable percentage of the taxable wages the employer pays its employees during the year for services performed in this State. An employer may not deduct the contributions due in whole or in part from the remuneration of the individuals employed. Taxable wages are determined in accordance
with G.S. 96-9.3. The applicable percentage for an employer is considered the employer's
contribution rate and determined in accordance with this section.

In accordance with the policy established in G.S. 166A-19.70A, an out-of-state business
performing disaster-related work in this State during a disaster response period at the request of
a critical infrastructure company is exempt from the provisions of this Chapter. The definitions,
provisions, and limitations in G.S. 166A-19.70A apply in this section."

SECTION 6.2.(c) G.S. 97-13 is amended by adding a new subsection to read:


(e) Disaster Relief. – In accordance with the policy established in G.S. 166A-19.70A, an
out-of-state business performing disaster-related work in this State during a disaster response
period at the request of a critical infrastructure company is exempt from the provisions of this
Chapter. The definitions, provisions, and limitations in G.S. 166A-19.70A apply in this
subsection."

SECTION 6.2.(d) G.S. 105-125(a) is amended by adding a new subdivision to read:

"§ 105-125. Exempt corporations.

(a) Exemptions. – The following corporations are exempt from the taxes levied by this
Article. Upon request of the Secretary, an exempt corporation must establish its claim for
exemption in writing:

…

(9) In accordance with the policy established in G.S. 166A-19.70A, an
out-of-state business performing disaster-related work in this State during a
disaster response period at the request of a critical infrastructure company is
exempt from the provisions of this Article. The definitions, provisions, and
limitations in G.S. 166A-19.70A apply in this subdivision."

SECTION 6.2.(e) G.S. 105-130.11(a) is amended by adding a new subdivision to read:

"(a) Exempt Organizations. – Except as provided in subsections (b) and (c), the following
organizations and any organization that is exempt from federal income tax under the Code are
exempt from the tax imposed under this Part.

…

(12) In accordance with the policy established in G.S. 166A-19.70A, an
out-of-state business performing disaster-related work in this State during a
disaster response period at the request of a critical infrastructure company is
exempt from the provisions of this Part. The definitions, provisions, and
limitations in G.S. 166A-19.70A apply in this subdivision."

SECTION 6.2.(f) G.S. 105-131.7(a) reads as rewritten:

"(a) An S Corporation incorporated or doing business in the State shall file with the
Department an annual return, on a form prescribed by the Secretary, on or before the due date
prescribed for the filing of C Corporation returns in G.S. 105-130.17. The return shall show the
name, address, and social security or federal identification number of each shareholder, income
attributable to the State and the income not attributable to the State with respect to each
shareholder as defined in G.S. 105-131(b)(4) and (5), and such other information as the Secretary
may require.

In accordance with the policy established in G.S. 166A-19.70A, an S Corporation that is an
out-of-state business performing disaster-related work in this State during a disaster response
period at the request of a critical infrastructure company is not required to file an annual return
for income derived for the work performed during this period. The definitions, provisions, and
limitations in G.S. 166A-19.70A apply to this subsection."

SECTION 6.2.(g) G.S. 105-153.4 is amended by adding a new subsection to read:

"§ 105-153.4. North Carolina taxable income defined.

…"
Disaster Relief Tax Exclusion. – In accordance with the policy established in G.S. 166A-19.70A, an out-of-state business and an out-of-state employee performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered to be conducting business in this State for the work performed during this period. The definitions, provisions, and limitations in G.S. 166A-19.70A apply to this subsection. Accordingly, North Carolina taxable income, for purposes of this Part, does not include the following:

1. Nonresident employee. – The earnings paid to an out-of-state employee.
2. S Corporations shareholders. – A shareholder’s pro rata share of S Corporation income if the income is attributable to work performed by the S Corporation as an out-of-state business performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company.
3. Partners and members of unincorporated business. – The amount of a partner’s or member's distributive share of the total net income of the business of a partnership or another unincorporated business if the income is attributable to work performed by an out-of-state business performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company.

SECTION 6.2.(h) G.S. 105-153.8(a)(2) reads as rewritten:

"§ 105-153.8. Income tax returns.
(a) Who Must File. – The following individuals must file with the Secretary an income tax return under affirmation:

…

(2) Every nonresident individual who meets all of the following requirements: (i) has gross income under the Code that exceeds the applicable standard deduction amount provided in G.S. 105-153.5(a)(1) and (ii) receives

a. Receives during the taxable year gross income that is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State, is derived from a business, trade, profession, or occupation carried on in this State, or is derived from gambling activities in this State. This subdivision does not apply to a nonresident individual who is not subject to withholding under G.S. 105-163.2(f).

b. Has gross income under the Code that exceeds the applicable standard deduction amount provided in G.S. 105-153.5(a)(1).

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

In accordance with the policy established in G.S. 166A-19.70A, a partnership that is an out-of-state business performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not required to file an information return for income derived for the work performed during this period. The definitions, provisions, and limitations in G.S. 166A-19.70A apply to this subsection.

SECTION 6.2.(j) G.S. 105-163.2 reads as rewritten:

"§ 105-163.2. Employers must withhold taxes.
(a) Withholding Required. – An employer shall deduct and withhold from the wages of each employee the State income taxes payable by the employee on the wages. For each payroll period, the employer shall withhold from the employee’s wages an amount that would approximate the employee’s income tax liability under Article 4 of this Chapter if the employer withheld the same amount from the employee’s wages for each similar payroll period in a calendar year. In calculating an employee’s anticipated income tax liability, the employer shall allow for the additions that employee is required to make under Article 4 of this Chapter and the deductions, and credits to which the employee is entitled under Article 4 of this Chapter. The amount of State income taxes withheld by an employer is held in trust for the Secretary.

(f) Nonresident Disaster Relief Employees. – In accordance with the policy established in G.S. 166A-19.70A, an employer is not required to withhold from the wages of its out-of-state employees the State income taxes that may otherwise apply for disaster-related work performed in this State during a disaster response period. The definitions, provisions, and limitations in G.S. 166A-19.70A apply in this subsection.

SECTION 6.3. G.S. 105-130.5(a) is amended by adding a new subdivision to read:

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

(30) Payments made to a related party that is not subject to tax under this Chapter in accordance with the policy established in G.S. 166A-19.70A, to the extent the payments are deducted in determining federal taxable income. For purposes of this subdivision, the term "related entity" has the same meaning as in G.S. 105-130.7A(b)(4)."

SECTION 6.4. Part 2 of Article 36B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.69A. Temporary license during disaster response period.
(a) Temporary License. – The Secretary may grant a temporary license to an applicant to import, export, distribute, or transport motor fuel in this State in response to a disaster declaration. The term "disaster declaration" has the same meaning as defined in G.S. 166A-19.3. The temporary license expires upon the expiration of the disaster declaration. A temporary license issued under this section may not be renewed or a new temporary license granted if the licensee failed to file the required returns or make payments of the required taxes.
(b) Requirements. – To obtain a temporary license, a person must file an application with the Secretary on a form prescribed by the Secretary within seven calendar days from the date of the disaster declaration. An application must include all of the following information:

(1) The legal name of the business and the trade name, if applicable, under which the person will transact business within the State.
(2) The federal identification number of the business or, if such number is unavailable, the social security number of the owner.

(3) The location, with a street number address, of the principal office or place of business and the location where records will be made available for inspection.

(4) Any other information required by the Secretary.

(c) Exceptions. – The Secretary may issue a temporary license under this section as an importer, exporter, distributor, or transporter without requiring the applicant to file with the Secretary a bond or an irrevocable letter of credit, as otherwise required by G.S. 105-449.72, and without requiring the applicant to be authorized to transact business in this State with the Secretary of State.

SECTION 6.5. This Part is effective when it becomes law and applies to taxable years beginning on or after January 1, 2019.

PART VII. EFFECTIVE DATE

SECTION 7. Except as otherwise provided, this act is effective when it becomes law.