

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 41*
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Proposed Conference Committee Substitute H41-PCCS10220-TDx-1

Short Title: Rev Laws Tech Changes.

(Public)

Sponsors:

Referred to:

February 4, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO VARIOUS
3 REVENUE LAWS, AS RECOMMENDED BY THE REVENUE LAWS STUDY
4 COMMITTEE.

5 The General Assembly of North Carolina enacts:

6
7 **PART II. REVENUE LAWS TECHNICAL, ADMINISTRATIVE, AND CLARIFYING**
8 **CHANGES**

9 **SECTION 2.1.(a)** Section 7.2(a) of S.L. 2014-3 reads as rewritten:

10 "**SECTION 7.2.(a)** This act shall not be construed to affect the interpretation of any statute
11 that is the subject of a State tax audit ~~pending as of the effective date of this act for taxable~~
12 years beginning before January 1, 2015, or litigation that is a direct result of such audit."

13 **SECTION 2.1.(b)** Section 7.3 of S.L. 2014-3 reads as rewritten:

14 "**SECTION 7.3.** This Part becomes effective January 1, 2015, and applies to withdrawals
15 of items from inventory for contracts entered into on or after that date, sales on or after that
16 ~~date date,~~ and contracts entered into on or after that date."

17 **SECTION 2.2.(a)** Section 8.1(c) of S.L. 2014-3 reads as rewritten:

18 "**SECTION 8.1.(c)** With respect to the change in this section regarding the rental of a
19 private residence, cottage, or similar accommodation that is rented for fewer than 15 days in a
20 calendar year and that is listed with a real estate broker or agent, the following provisions
21 apply:

22 (1) A retailer is ~~not~~ liable for an overcollection ~~or undercollection~~ of sales tax or
23 occupancy tax for the rental of such an accommodation that is occupied or
24 available to be occupied for nights beginning June 14, 2012, and ending June
25 30, 2014, and must remit the tax collected.

26 (2) A retailer is not liable for an undercollection of sales tax or occupancy tax
27 for the rental of such an accommodation that is occupied or available to be
28 occupied for nights beginning June 1, 2014, and ending June 30, 2014, if the
29 retailer has made a good-faith effort to comply with the law and collect the
30 proper amount of tax and has, due to the change under this section,
31 overcollected or undercollected the amount of sales tax or occupancy tax



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1 that is due. This subsection applies only to the period beginning June 14,
2 2012, and ending July 1, 2014.~~tax."~~

3 **SECTION 2.2.(b)** This section becomes effective June 1, 2014.

4 **SECTION 2.3.** Section 14.26 of S.L. 2014-3 is repealed.

5 **SECTION 2.4.(a)** The purpose of this section is to clarify the intent of the 2013
6 Session of the General Assembly that the Utilities Commission must adjust the rate for sales of
7 electricity, piped natural gas, and water and wastewater services to reflect all of the tax changes
8 as enacted in S.L. 2013-316.

9 **SECTION 2.4.(b)** Section 4.2(a) of S.L. 2013-316 reads as rewritten:

10 "**SECTION 4.2.(a)** Pursuant to ~~G.S. 62-31 and G.S. 62-32, the~~ The Utilities Commission
11 must adjust the rate set for the following utilities:

12 (1) Electricity to reflect the repeal of G.S. 105-116 and the resulting liability of
13 electric power companies for the tax imposed under ~~G.S. 105-122 and~~
14 ~~for~~G.S. 105-122, the increase in the rate of tax imposed on sales of
15 electricity under ~~G.S. 105-164.4.~~G.S. 105-164.4, and the reduction in the
16 corporate income tax rate imposed under G.S. 105-130.3.

17 (2) Piped natural gas to reflect the repeal of Article 5E of Chapter 105 of the
18 General Statutes, the repeal of the credit formerly allowed under
19 G.S. 105-122(d1), ~~and~~ the resulting liability of companies for the tax
20 imposed on sales of piped natural gas under ~~G.S. 105-164.4.~~G.S. 105-164.4,
21 and the reduction in the corporate income tax rate imposed under
22 G.S. 105-130.3.

23 (3) Public water and wastewater companies to reflect the repeal of G.S. 105-116
24 and the resulting liability of public water and wastewater companies under
25 G.S. 105-122, and the reduction in the corporate income tax rate imposed
26 under G.S. 105-130.3."

27 **SECTION 2.4.(c)** The Utilities Commission must order a utility to add interest to
28 money refunded to its customers for refunds resulting from the reduction of the corporate
29 income tax rate effective for taxable years beginning on or after January 1, 2014. Refunds
30 subject to interest shall not include any amounts to be refunded arising from excess deferred
31 income taxes due to the reduction in the corporate income tax rate effective for taxable years
32 beginning on or after January 1, 2014. The interest rate applied to the refund must be set in
33 accordance with G.S. 62-130.

34 **SECTION 2.4.(d)** Subsection (b) of this section is effective January 1, 2014. The
35 remainder of this section is effective when it becomes law and applies to refunds issued on or
36 after that date unless a utility has implemented rate changes on or before January 1, 2015, to
37 effectuate the refunds.

38 **SECTION 2.5.(a)** G.S. 105-113.35(d) reads as rewritten:

39 "(d) Manufacturer's Option. – A manufacturer who is not a retail dealer and who ships
40 tobacco products other than cigarettes to either a wholesale dealer or retail dealer licensed
41 under this Part may apply to the Secretary to be relieved of paying the tax imposed by this
42 section on the tobacco products. A manufacturer who ships vapor products to either a
43 wholesale dealer or retail dealer licensed under this Part may apply to the Secretary to be
44 relieved of paying the tax imposed by this section on the vapor products shipped to either a
45 wholesale dealer or retail dealer. Once granted permission, a manufacturer may choose not to
46 pay the tax until otherwise notified by the Secretary. To be relieved of payment of the tax
47 imposed by this section, a manufacturer must comply with the requirements set by the
48 Secretary.

49 Permission granted under this subsection to a manufacturer to be relieved of paying the tax
50 imposed by this section applies to an integrated wholesale dealer with whom the manufacturer
51 is an affiliate. A manufacturer must notify the Secretary of any integrated wholesale dealer with

1 whom it is an affiliate when the manufacturer applies to the Secretary for permission to be
2 relieved of paying the tax and when an integrated wholesale dealer becomes an affiliate of the
3 manufacturer after the Secretary has given the manufacturer permission to be relieved of
4 paying the tax.

5 If a person is both a manufacturer of cigarettes and a wholesale dealer of tobacco products
6 other than cigarettes and the person is granted permission under G.S. 105-113.10 to be relieved
7 of paying the cigarette excise tax, the permission applies to the tax imposed by this section on
8 tobacco products other than cigarettes. A cigarette manufacturer who becomes a wholesale
9 dealer after receiving permission to be relieved of the cigarette excise tax must notify the
10 Secretary of the permission received under G.S. 105-113.10 when applying for a license as a
11 wholesale dealer."

12 **SECTION 2.5.(b)** This section becomes effective June 1, 2015.

13 **SECTION 2.6.** G.S. 105-129.16A reads as rewritten:

14 "**§ 105-129.16A. Credit for investing in renewable energy property.**

15 (a) Credit. – ~~If a taxpayer that has constructed, purchased, or leased renewable energy~~
16 ~~property places it in service in this State during the taxable year, the taxpayer is allowed a~~
17 ~~credit equal to thirty-five percent (35%) of the cost of the property. A taxpayer that has~~
18 constructed, purchased, or leased renewable energy property is allowed a credit equal to
19 thirty-five percent (35%) of the cost of the property if the property is placed in service in this
20 State during the taxable year. In the case of renewable energy property that serves a
21 nonbusiness purpose, the credit must be taken for the taxable year in which the property is
22 placed in service. For all other renewable energy property, the entire credit may not be taken
23 for the taxable year in which the property is placed in service but must be taken in five equal
24 installments beginning with the taxable year in which the property is placed in service. Upon
25 request of a taxpayer that leases renewable energy property, the lessor of the property must give
26 the taxpayer a statement that describes the renewable energy property and states the cost of the
27 property. No credit is allowed under this section to the extent the cost of the renewable energy
28 property was provided by public funds. For the purposes of this section, "public funds" does not
29 include grants made under section 1603 of the American Recovery and Reinvestment Tax Act
30 of 2009.

31"

32 **SECTION 2.7.** Section 1.1(a) of S.L. 2014-3 is rewritten to read:

33 "**SECTION 1.1.(a)** G.S. 105-130.5(b), as amended by Section 14.3 of this act, reads as
34 rewritten:

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

37 ...

38 (4) ~~Losses in the nature~~ Any unused portion of a net economic loss as allowed
39 under G.S. 105-130.8A(e). losses sustained by the corporation in any or all of
40 the 15 preceding years pursuant to the provisions of G.S. 105-130.8. A
41 corporation required to allocate and apportion its net income under the
42 provisions of G.S. 105-130.4 shall deduct its allocable and apportionable net
43 economic loss only from total income allocable and apportionable to this
44 State pursuant to the provisions of G.S. 105-130.8 This subdivision expires
45 for taxable years beginning on or after January 1, 2030.

46 (4a) A State net loss as allowed under G.S. 105-130.8A. A corporation may
47 deduct its allocable and apportionable State net loss only from total income
48 allocable and apportionable to this State.

49"

50 **SECTION 2.8.(a)** G.S. 105-134.6A(h) reads as rewritten:

1 "(h) Definitions. – ~~For purposes of this section, a "transferor" is an individual,~~
 2 ~~partnership, corporation, S Corporation, limited liability company, or an estate or trust that does~~
 3 ~~not fully distribute income to its beneficiaries, and an "owner in a transferor"~~The following
 4 definitions apply in this section:

5 (1) Owner in a transferor. – One or more of the following of a transferor:

6 a. ~~is a~~A partner, shareholder, ~~member, or beneficiary~~or member.

7 b. A beneficiary subject to tax under Part 2 or 3 of Article 4 of this
 8 Chapter of a transferor.Chapter.

9 (2) Transferor. – An individual, partnership, corporation, S Corporation, limited
 10 liability company, or an estate or trust that does not fully distribute income
 11 to its beneficiaries."

12 **SECTION 2.8.(b)** G.S. 105-153.6(h) reads as rewritten:

13 "(h) Definitions. – ~~For purposes of this section, a "transferor" is an individual,~~
 14 ~~partnership, corporation, S Corporation, limited liability company, or an estate or trust that does~~
 15 ~~not fully distribute income to its beneficiaries, and an "owner in a transferor" is~~The following
 16 definitions apply in this section:

17 (1) Owner in a transferor. – One or more of the following of a transferor:

18 a. ~~a~~A partner, shareholder, ~~member, or member.~~

19 b. ~~or~~A beneficiary subject to tax under Part 2 or 3 of Article 4 of this
 20 Chapter of a transferor.

21 (2) Transferor. – An individual, partnership, corporation, S Corporation, limited
 22 liability company, or an estate or trust that does not fully distribute income
 23 to its beneficiaries."

24 **SECTION 2.8.(c)** Subsection (a) of this section is effective for taxable years
 25 beginning on or after January 1, 2013. Subsection (b) of this section is effective for taxable
 26 years beginning on or after January 1, 2014. The remainder of this section is effective when it
 27 becomes law.

28 **SECTION 2.9.(a)** Notwithstanding G.S. 105-163.15, the Secretary of Revenue
 29 may not impose interest with respect to an underpayment of income tax to the extent the
 30 underpayment was created or increased by the changes made in Section 2.2 of S.L. 2014-3.
 31 Notwithstanding G.S. 105-163.8, a withholding agent is not liable for the amount of tax the
 32 agent fails to withhold to the extent the amount of tax not withheld was created or increased by
 33 the changes made in Section 2.2 of S.L. 2014-3.

34 **SECTION 2.9.(b)** This section is effective when it becomes law and applies to
 35 taxable years beginning on or after January 1, 2014, and before January 1, 2015, and to payroll
 36 periods beginning on or after January 1, 2014, and before January 1, 2015.

37 **SECTION 2.10.** G.S. 105-164.3(35) reads as rewritten:

38 "**§ 105-164.3. Definitions.**

39 The following definitions apply in this Article:

40 ...

41 (35) ~~Retailer. – A person engaged in business of any of the following:~~Any of the
 42 following persons:

43 a. ~~Making~~A person engaged in business of making sales at retail,
 44 offering to make sales at retail, or soliciting sales at retail of tangible
 45 personal property, digital property, or services for storage, use, or
 46 consumption in this State. When the Secretary finds it necessary for
 47 the efficient administration of this Article to regard any sales
 48 representatives, solicitors, representatives, consignees, peddlers, or
 49 truckers as agents of the dealers, distributors, consignors,
 50 supervisors, employers, or persons under whom they operate or from
 51 whom they obtain the items sold by them regardless of whether they

1 are making sales on their own behalf or on behalf of these dealers,
 2 distributors, consignors, supervisors, employers, or persons, the
 3 Secretary may so regard them and may regard the dealers,
 4 distributors, consignors, supervisors, employers, or persons as
 5 "retailers" for the purpose of this Article.

6 b. ~~Delivering~~, A person engaged in business of delivering, erecting,
 7 installing, or applying tangible personal property for use in this State,
 8 regardless of whether the property is permanently affixed to real
 9 property or other tangible personal property.

10 c. ~~Making~~ A person engaged in business of making a remote sale, if
 11 one of the conditions listed in G.S. 105-164.8(b) is met.

12 d. A person, other than a facilitator, required to collect the tax levied
 13 under G.S. 105-164.4(a)."

14 **SECTION 2.11.** G.S. 105-164.4G reads as rewritten:

15 **"§ 105-164.4G. Entertainment activity.**

16 ...
 17 (f) Exemptions. – The sale at retail and the use, storage, or consumption in this State of
 18 the following gross receipts derived from an admission charge to an entertainment activity are
 19 specifically exempt from the tax imposed by this Article:

20 ...
 21 (g) Sourcing. – ~~Admission~~ An admission charge to an entertainment activity is sourced
 22 to the location where admission to the entertainment activity may be gained by a person. When
 23 the location where admission may be gained is not known at the time of the receipt of the gross
 24 receipts for an admission charge, the sourcing principles in G.S. 105-164.4B(a) apply."

25 **SECTION 2.12.** G.S. 105-164.13 reads as rewritten:

26 **"§ 105-164.13. Retail sales and use tax.**

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

30 ...
 31 (8a) Sales to a small power production facility, as defined in 16 U.S.C. §
 32 796(17)(A), of fuel and piped natural gas used by the facility to generate
 33 electricity.

34 ...
 35 (10) Sales of the following to commercial laundries or to pressing and dry
 36 cleaning establishments:

37 a. Articles or materials used for the identification of garments being
 38 laundered or dry cleaned, wrapping paper, bags, hangers, starch,
 39 soaps, detergents, cleaning fluids and other compounds or chemicals
 40 applied directly to the garments in the direct performance of the
 41 laundering or the pressing and cleaning service.

42 b. Laundry and dry-cleaning machinery, parts and accessories attached
 43 to the machinery, and lubricants applied to the machinery.

44 c. ~~Fuel, other than electricity,~~ Fuel and piped natural gas used in the
 45 direct performance of the laundering or the pressing and cleaning
 46 service. The exemption does not apply to electricity.

47 ...
 48 (57) ~~Fuel and~~ Fuel, piped natural gas, and electricity sold to a manufacturer for
 49 use in connection with the operation of a manufacturing facility. The
 50 exemption does not apply to electricity used at a facility at which the
 51 primary activity is not manufacturing.

...."

SECTION 2.13.(a) G.S. 105-164.13E reads as rewritten:

"§ 105-164.13E. Exemption for farmers.

(a) Exemption. – A qualifying farmer is a person who has an annual ~~gross income from farming operations~~ for the preceding taxable year of ten thousand dollars (\$10,000) or more ~~from farming operations~~ or who has an average annual ~~gross income from farming operations~~ for the three preceding taxable years of ten thousand dollars (\$10,000) or ~~more from farming operations~~. more. For purposes of this section, the term "income from farming operations" means sales plus any other amounts treated as gross income under the Code from farming operations. A qualifying farmer includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. A qualifying farmer may apply to the Secretary for an exemption certificate number under G.S. 105-164.28A. The exemption certificate expires when a person fails to meet the income threshold for three consecutive taxable years or ceases to engage in farming ~~operations.~~operations, whichever comes first.

The following tangible personal property, digital property, and services are exempt from sales and use tax if purchased by a qualifying farmer and for use by the farmer in farming operations. For purposes of this section, an item is used by a farmer for farming operations if it is used for the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals:

- (1) ~~Fuel and~~Fuel, piped natural gas, and electricity that ~~is~~are measured by a separate meter or another separate device and used for a purpose other than preparing food, heating dwellings, and other household purposes.
- (2) Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, potting soil, baler twine, and seeds.
- (3) Farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery. The term "machinery" includes implements that have moving parts or are operated or drawn by an animal. The term does not include implements operated wholly by hand or motor vehicles required to be registered under Chapter 20 of the General Statutes.
- (4) A container used in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals or used in packaging and transporting the farmer's product for sale.
- (5) A grain, feed, or soybean storage facility and parts and accessories attached to the facility.
- (6) Any of the following substances when purchased for use on animals or plants, as appropriate, held or produced for commercial purposes. This exemption does not apply to any equipment or devices used to administer, release, apply, or otherwise dispense these substances:
 - a. Remedies, vaccines, medications, litter materials, and feeds for animals.
 - b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.
 - c. Defoliants for use on cotton or other crops.
 - d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.
 - e. Semen.
- (7) Baby chicks and poults sold for commercial poultry or egg production.
- (8) Any of the following items concerning the housing, raising, or feeding of animals:

1 a. A commercially manufactured facility to be used for commercial
2 purposes for housing, raising, or feeding animals or for housing
3 equipment necessary for these commercial activities. The exemption
4 also applies to commercially manufactured equipment, and parts and
5 accessories for the equipment, used in the facility.

6 b. Building materials, supplies, fixtures, and equipment that become a
7 part of and are used in the construction, repair, or improvement of an
8 enclosure or a structure specifically designed, constructed, and used
9 for housing, raising, or feeding animals or for housing equipment
10 necessary for one of these commercial activities. The exemption also
11 applies to commercially manufactured equipment, and parts and
12 accessories for the equipment, used in the enclosure or a structure.

13 (9) A bulk tobacco barn or rack, parts and accessories attached to the tobacco
14 barn or rack, and any similar apparatus, part, or accessory used to cure or dry
15 tobacco or another crop.

16 (b) Conditional Exemption. – A person who does not meet the definition of a qualifying
17 farmer in subsection (a) of this section may apply to the Department for a conditional
18 exemption certificate under G.S. 105-164.28A. A person with a conditional exemption
19 certificate is allowed to purchase items exempt from sales and use tax to the same extent as a
20 qualifying farmer under subsection (a) of this section. To receive a conditional exemption
21 certificate under this subsection, the person must certify that the person intends to engage in
22 farming operations, as that term is described in subsection (a) of this section, and that the
23 person will timely file State and federal income tax returns that reflect income and expenses
24 incurred from farming operations during the taxable years that the conditional exemption
25 certificate applies.

26 A conditional exemption certificate issued under this subsection is valid for the taxable year in
27 which the certificate is issued and the following two taxable years, provided the person to
28 whom the certificate is issued is engaged in farming and provides copies of applicable State
29 and federal income tax returns to the Department within 90 days following the end of the due
30 date of an income tax return for each taxable year covered by the conditional exemption
31 certificate, including an extension of the due date granted by the Secretary under
32 G.S. 105-263. A conditional exemption certificate issued under this subsection may not be
33 extended or renewed beyond the original three-year period. The Department may not issue a
34 conditional exemption certificate to a person who has had a conditional exemption certificate
35 issued under this subsection during the prior 15 taxable years.

36 A person who purchases items with a conditional exemption certificate must maintain
37 documentation of the items purchased and copies of State and federal income tax returns that
38 reflect activities from farming operations for the period of time covered by the conditional
39 exemption certificate for three years following the expiration of the conditional exemption
40 certificate. The Secretary may require a person who has a conditional exemption certificate to
41 provide any other information requested by the Secretary to verify the person met the
42 conditions of this subsection. A person who fails to provide the information requested by the
43 Secretary in a timely manner or who fails to meet the requirements of this subsection becomes
44 liable for any taxes for which an exemption under this subsection was claimed. The taxes
45 become due and payable at the expiration of the conditional exemption certificate, and interest
46 accrues from the date of the original purchase. Additionally, where the person does not timely
47 provide the information requested by the Secretary, the misuse of exemption certificate penalty
48 in G.S. 105-236(a)(5a) applies to each seller identified by the Department from which the
49 person made a purchase.

50 (c) Contract with a Farmer. – A qualifying item listed in subdivisions (5), (8), and (9) of
51 subsection (a) of this section purchased to fulfill a contract with a person who holds a

1 qualifying farmer exemption certificate or a conditional farmer exemption certificate issued
2 under G.S. 105-164.28A is exempt from sales and use tax to the same extent as if purchased
3 directly by the person who holds the exemption certificate. A contractor that purchases one of
4 the items allowed an exemption under this section must provide an exemption certificate to the
5 retailer that includes the name of the agricultural exemption certificate holder and the
6 agricultural exemption certificate number issued to that holder.

7 (d) Definition. – For purposes of this section, the term "taxable year" has the same
8 meaning as defined in G.S. 105-153.3."

9 **SECTION 2.13.(b)** This section becomes effective July 1, 2014. A contractor who
10 paid sales and use tax on an item exempt from sales and use tax pursuant to
11 G.S. 105-164.13(c), as enacted by this section, may request a refund from the retailer, and the
12 retailer may, upon issuance of the refund or credit, request a refund for the overpayment of tax
13 under G.S. 105-164.11(a)(1).

14 **SECTION 2.14.(a)** G.S. 105-164.16A reads as rewritten:

15 **"§ 105-164.16A. Reporting option for prepaid meal plans.**

16 This section provides a ~~taxpayer-retailer~~ that offers to ~~sell~~ a prepaid meal ~~plan-plan~~ subject
17 to the tax imposed by G.S. 105-164.4 with an option concerning the method by which the sales
18 tax will be remitted to the Secretary and a return filed under G.S. 105-164.16. When the retailer
19 enters into an agreement with a food service contractor by which the food service contractor
20 agrees to provide food or prepared food under a prepaid meal plan, and the food service
21 contractor with whom the retailer contracts is also a retailer under this Article, the retailer may
22 include in the agreement that the food service contractor is liable for ~~collecting-reporting~~ and
23 remitting the sales tax due on the gross receipts derived from the prepaid meal plan on behalf of
24 the retailer. The agreement must provide that the tax applies to the allocated sales price of the
25 prepaid meal plan paid by or on behalf of the person entitled to the food or prepaid food under
26 the plan and not the amount charged by the food service contractor to the retailer under the
27 agreement for the food and prepared food for the person.

28 A retailer who elects this option must report to the food service contractor with whom it has
29 an agreement the gross receipts a person pays to the retailer for a prepaid meal plan. The
30 retailer must report the gross receipts on an accrual basis of accounting, as required under
31 G.S. 105-164.20. The retailer must send the food service contractor the tax due on the gross
32 receipts derived from a prepaid meal plan. Tax payments received by a food service contractor
33 from a retailer are held in trust by the food service contractor for remittance to the Secretary. A
34 food service contractor that receives a tax payment from a retailer must remit the amount
35 received to the Secretary. A food service contractor is not liable for tax due but not received
36 from a retailer. A retailer that does not send the food service contractor the tax due on the gross
37 receipts derived from a prepaid meal plan is liable for the amount of tax the retailer fails to send
38 to the food service contractor."

39 **SECTION 2.14.(b)** G.S. 105-164.20 reads as rewritten:

40 **"§ 105-164.20. Cash or accrual basis of reporting.**

41 (a) Basis Selected. – ~~Any retailer, except a retailer who sells electricity or~~
42 telecommunications service, Except as provided in subsection (b) of this section, a retailer may
43 report sales on either the cash or accrual basis of accounting upon making application to the
44 Secretary for permission to use the basis selected. Permission granted by the Secretary to report
45 on a selected basis continues in effect until revoked by the Secretary or the taxpayer receives
46 permission from the Secretary to change the basis selected.

47 (b) Accrual Basis. – ~~A~~ For purposes of reporting and remitting sales tax under this
48 Article, a retailer listed in this subsection must report the gross receipts it derives from the
49 taxable transaction listed in this subsection on an accrual basis of accounting. The following
50 retailers must report gross receipts as provided in this subsection:

1 (1) ~~A retailer who sells electricity or electricity, piped natural gas, or~~
2 telecommunications service ~~must report its sales on an accrual basis.~~ ~~service.~~
3 A sale of ~~electricity or electricity, piped natural gas, or~~ telecommunications
4 service is considered to accrue when the retailer bills its customer for the
5 sale.

6 (2) A retailer who derives gross receipts from a prepaid meal plan,
7 notwithstanding that the retailer may report tax on the cash basis for other
8 sales at retail and notwithstanding that the revenue has not been recognized
9 for accounting purposes.

10 (3) A retailer who sells or derives gross receipts from a service contract, as
11 provided in G.S. 105-164.4I(d)."

12 **SECTION 2.15.** G.S. 105-164.29(a) reads as rewritten:

13 "(a) Requirement and Application. – Before a person may engage in business as a
14 retailer or a wholesale merchant or when a facilitator is liable for tax under G.S. 105-164.4F,
15 the person must obtain a certificate of registration. To obtain a certificate of registration, a
16 person must register with the Department. A person who has more than one business is required
17 to obtain only one certificate of registration for each legal entity to cover all operations of each
18 business throughout the State. An application for registration must be signed as follows:

19 (1) By the owner, if the owner is an individual.

20 (2) By a manager, member, or company official, ~~partner,~~ if the owner is ~~an~~
21 ~~association, a partnership, or a limited liability company.~~

22 (2a) By a manager, member, or partner, if the owner is a partnership.

23 (3) By an executive officer or some other person specifically authorized by the
24 corporation to sign the application, if the owner is a corporation. If the
25 application is signed by a person authorized to do so by the corporation,
26 written evidence of the person's authority must be attached to the
27 application."

28 **SECTION 2.16.** G.S. 105-241.6(b)(5) reads as rewritten:

29 "(b) Exceptions. – The exceptions to the general statute of limitations for obtaining a
30 refund of an overpayment are as follows:

31 ...

32 (5) Contingent Event. – The period to request a refund of an overpayment may
33 be extended as provided in this subdivision if an event or condition prevents
34 the taxpayer from possessing the information necessary to file an accurate
35 and definite request for a refund of an overpayment under this Chapter:

36 a. If a taxpayer is subject to a contingent event and files written notice
37 with the Secretary, the period to request a refund of an overpayment
38 is six months after the contingent event concludes.

39 ~~b. For purposes of this subdivision,~~ For purposes of this subdivision, a
40 "contingent event" means litigation or a State-state tax audit initiated
41 prior to the expiration of the statute of limitations under subsection
42 (a) of this section, the pendency of which prevents the taxpayer from
43 possessing the information necessary to file an accurate and definite
44 request for a refund of an overpayment under this Chapter.

45 ~~c. For purposes of this subdivision, "notice to the Secretary" means~~
46 ~~written notice~~ The written notice to the Secretary must be filed with
47 ~~the Secretary~~ prior to expiration of the statute of limitations under
48 subsection (a) of this section for a return or payment in which a
49 contingent event prevents a taxpayer from filing a definite request for
50 a refund of an overpayment. The notice must identify and describe
51 the contingent event, identify the type of tax, list the return or

1 payment affected by the contingent event, and state in clear terms the
2 basis for and an estimated amount of the overpayment.

3 ~~d.b.~~ ~~A-If a taxpayer who~~ contends that an event or condition other than
4 ~~litigation or a State tax audit~~ a contingent event, as defined in this
5 ~~subdivision~~, has occurred that prevents the taxpayer from filing an
6 accurate and definite request for a refund of an overpayment within
7 the period under subsection (a) of this ~~section~~section, the taxpayer
8 may submit a written request to the Secretary seeking an extension of
9 the statute of limitations allowed under this subdivision. The request
10 must establish by clear, convincing proof that the event or condition
11 is beyond the taxpayer's control and that it prevents the taxpayer's
12 timely filing of an accurate and definite request for a refund of an
13 overpayment. The request must be filed within the period under
14 subsection (a) of this section. The Secretary's decision on the request
15 is final and is not subject to administrative or judicial review."

16 **SECTION 2.17.(a)** G.S. 105-338(c) reads as rewritten:

17 "(c) Certain Property of Bus Line, Motor Freight Carrier, ~~Airline, and Mobile~~
18 ~~Telecommunications and Airline~~ Companies. –

19 ...
20 (4) ~~The appraised valuation of the tangible personal property of a mobile~~
21 ~~telecommunications company (excluding towers) that is appraised in~~
22 ~~accordance with the provisions of G.S. 105-336(e) is allocated among the~~
23 ~~local taxing units in which the property of the company is situated on~~
24 ~~January 1 in the proportion that the original cost of the property in the taxing~~
25 ~~unit bears to the original cost of all such property in this State."~~

26 **SECTION 2.17.(b)** G.S. 105-339 reads as rewritten:

27 "**§ 105-339. Certification of appraised valuations of nonsystem property and locally**
28 **assigned rolling stock, tangible personal property of tower aggregator**
29 **companies, and ~~certain~~—tangible personal property of mobile**
30 **telecommunications companies.**

31 Having determined the appraised valuations of the nonsystem properties of public service
32 companies in accordance with subdivisions (b)(2) and (b)(3) of G.S. 105-335 and the appraised
33 valuations of locally assigned rolling stock in accordance with subdivision (c)(1) of
34 G.S. 105-335, the appraised valuations of the tangible personal property of tower aggregator
35 companies in accordance with G.S. 105-336(d) and the appraised valuations of ~~towers of the~~
36 tangible personal property of mobile telecommunications companies in accordance with
37 ~~G.S. 105-336(d),~~G.S. 105-336(c) and (d), the Department of Revenue shall assign those
38 appraised valuations to the taxing units in which such properties are situated by certifying the
39 valuations to the appropriate counties and municipalities. Each local taxing unit receiving such
40 certified valuations shall assess them at the figures certified and shall tax the assessed
41 valuations at the rate of tax levied against other property subject to taxation therein."

42 **SECTION 2.17.(c)** Section 11.1(g) of S.L. 2014-3 is repealed.

43 **SECTION 2.17.(d)** Subsection (c) of this section is effective when it becomes law.

44 The remainder of this section is effective for taxes imposed for taxable years beginning on or
45 after July 1, 2015.

46 **SECTION 2.18.(a)** G.S. 160A-206 reads as rewritten:

47 "**§ 160A-206. General power to impose taxes.**

48 (a) Authority. – A city shall have power to impose taxes only as specifically authorized
49 by act of the General Assembly. Except when the statute authorizing a tax provides for
50 penalties and interest, the power to impose a tax shall include the power to impose reasonable
51 penalties for failure to declare tax liability, if required, or to impose penalties or interest for

1 failure to pay taxes lawfully due within the time prescribed by law or ordinance. In determining
2 the liability of any taxpayer for a tax, a city may not employ an agent who is compensated in
3 whole or in part by the city for services rendered on a contingent basis or any other basis
4 related to the amount of tax, interest, or penalty assessed against or collected from the taxpayer.
5 The power to impose a tax shall also include the power to provide for its administration in a
6 manner not inconsistent with the statute authorizing the tax.

7 (b) Prohibition. – A city may not impose a license, franchise, or privilege tax on a
8 person engaged in any of the businesses listed in this subsection. These businesses are subject
9 to sales tax at the combined general rate for which the city receives a share of the tax revenue
10 or they are subject to the local sales tax:

11 (1) Supplying piped natural gas.

12 (2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).

13 (3) Providing video programming taxed under G.S. 105-164.4(a)(6).

14 (4) Providing electricity."

15 **SECTION 2.18.(b)** G.S. 153A-146 reads as rewritten:

16 "**§ 153A-146. General power to impose taxes.**

17 (a) Authority. – A county may impose taxes only as specifically authorized by act of
18 the General Assembly. Except when the statute authorizing a tax provides for penalties and
19 interest, the power to impose a tax includes the power to impose reasonable penalties for failure
20 to declare tax liability, if required, and to impose penalties or interest for failure to pay taxes
21 lawfully due within the time prescribed by law or ordinance. In determining the liability of any
22 taxpayer for a tax, a county may not employ an agent who is compensated in whole or in part
23 by the county for services rendered on a contingent basis or any other basis related to the
24 amount of tax, interest, or penalty assessed against or collected from the taxpayer. The power to
25 impose a tax also includes the power to provide for its administration in a manner not
26 inconsistent with the statute authorizing the tax.

27 (b) Prohibition. – A county may not impose a license, franchise, or privilege tax on a
28 person engaged in any of the businesses listed in this subsection:

29 (1) Supplying piped natural gas.

30 (2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).

31 (3) Providing video programming taxed under G.S. 105-164.4(a)(6).

32 (4) Providing electricity."

33 **SECTION 2.19.(a)** The Department of Revenue may draw the funds needed to
34 make the following distributions from the sales and use tax collections under Article 5 of
35 Chapter 105 of the General Statutes:

36 (1) The September 15, 2014, distribution of the franchise tax to cities under
37 G.S. 105-116.1 for the calendar quarter that begins April 1, 2014.

38 (2) The September 15, 2014, distribution of the excise tax to cities under
39 G.S. 105-187.44 for the calendar quarter that begins April 1, 2014.

40 **SECTION 2.19.(b)** This section becomes effective July 1, 2014.

41 **SECTION 2.20.(a)** G.S. 105-153.3 reads as rewritten:

42 "**§ 105-153.3. Definitions.**

43 The following definitions apply in this Part:

44 ...

45 (18) Surviving spouse. – Defined in section 2(a) of the Code.

46 ~~(18)~~(19) Taxable year. – Defined in section 441(b) of the Code.

47 ~~(19)~~(20) Taxpayer. – An individual subject to the tax imposed by this Part.

48 ~~(20)~~(21) This State. – The State of North Carolina."

49 **SECTION 2.20.(b)** G.S. 105-153.5(a)(1) reads as rewritten:

50 "(a) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may
51 deduct from adjusted gross income either the standard deduction amount provided in

subdivision (1) of this subsection or the itemized deduction amount provided in subdivision (2) of this subsection that the taxpayer claimed under the Code. In the case of a married couple filing separate returns, a taxpayer may not deduct the standard deduction amount if the taxpayer or the taxpayer's spouse claims the itemized deductions amount:

(1) Standard deduction amount. – An amount equal to the amount listed in the table below based on the taxpayer's filing status:

Filing Status	Standard Deduction
Married, filing jointly jointly/surviving spouse	\$15,000
Head of Household	12,000
Single	7,500
Married, filing separately	7,500."

SECTION 2.20.(c) G.S. 105-134.1 reads as rewritten:

"§ 105-134.1. Definitions.

The following definitions apply in this Part:

...

(15a) Surviving spouse. – Defined in section 2(a) of the Code.

...."

SECTION 2.20.(d) G.S. 105-134.6(a2) reads as rewritten:

"(a2) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may deduct either the North Carolina standard deduction amount for that taxpayer's filing status or the itemized deductions amount claimed under the Code. The North Carolina standard deduction amount is the lesser of the amount shown in the table below or the amount allowed under the Code. In the case of a married couple filing separate returns, a taxpayer may not deduct the standard deduction amount if the taxpayer or the taxpayer's spouse claims itemized deductions for State purposes.

A taxpayer that deducts the standard deduction amount under this subsection and is entitled to an additional deduction amount under section 63(f) of the Code for the aged or blind may deduct an additional amount under this subsection. The additional amount the taxpayer may deduct is six hundred dollars (\$600.00) in the case of an individual who is married and seven hundred fifty dollars (\$750.00) in the case of an individual who is not married and is not a surviving spouse. The taxpayer is allowed the same number of additional amounts that the taxpayer claimed under the Code for the taxable year.

Filing Status	Standard Deduction
Married, filing jointly jointly/ <u>surviving spouse</u>	\$6,000
Head of Household	4,400
Single	3,000
Married, filing separately	3,000."

SECTION 2.20.(e) Subsections (a) and (b) of this section are effective for taxable years beginning on or after January 1, 2014. Subsections (c) and (d) of this section are effective retroactively for taxable years beginning on or after January 1, 2012, and before January 1, 2014. The remainder of this section is effective when it becomes law.

SECTION 2.21. G.S. 105-164.13B(a)(4) reads as rewritten:

"(a) State Exemption. – Food is exempt from the taxes imposed by this Article unless the food is included in one of the subdivisions in this subsection. The following food items are subject to tax:

...

(4) Prepared food, other than bakery items sold without eating utensils by an artisan bakery. The term "bakery item" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins,

1 bars, cookies, and tortillas. An artisan bakery is a bakery that meets all of the
2 following requirements:

- 3 a. It derives over eighty percent (80%) of its gross receipts from bakery
4 items.
- 5 b. Its annual gross receipts, combined with the gross receipts of all
6 related ~~persons as defined in G.S. 105-163.010, persons,~~ do not
7 exceed one million eight hundred thousand dollars (\$1,800,000). For
8 purposes of this subdivision, the term "related person" means a
9 person described in one of the relationships set forth in section
10 267(b) or 707(b) of the Code."

11 **SECTION 2.22.(a)** G.S. 105-153.4 reads as rewritten:

12 **"§ 105-153.4. North Carolina taxable income defined.**

13 (a) Residents. – For an individual who is a resident of this State, the term "North
14 Carolina taxable income" means the taxpayer's adjusted gross income as modified in
15 G.S. 105-153.5 and ~~G.S. 105-153.6 and G.S. 105-134.6A,~~ G.S. 105-153.6.

16 (b) Nonresidents. – For a nonresident individual, the term "North Carolina taxable
17 income" means the taxpayer's adjusted gross income as modified in G.S. 105-153.5 and
18 ~~G.S. 105-153.6 and G.S. 105-134.6A,~~ G.S. 105-153.6, multiplied by a fraction the denominator
19 of which is the taxpayer's gross income as modified in G.S. 105-153.5 and ~~G.S. 105-153.6 and~~
20 ~~G.S. 105-134.6A,~~ G.S. 105-153.6, and the numerator of which is the amount of that gross
21 income, as modified, that is derived from North Carolina sources and is attributable to the
22 ownership of any interest in real or tangible personal property in this State, is derived from a
23 business, trade, profession, or occupation carried on in this State, or is derived from gambling
24 activities in this State.

25 (c) Part-year Residents. – If an individual was a resident of this State for only part of
26 the taxable year, having moved into or removed from the State during the year, the term "North
27 Carolina taxable income" has the same meaning as in subsection (b) of this section except that
28 the numerator includes gross income, as modified under G.S. 105-153.5 and ~~G.S. 105-153.6~~
29 ~~and G.S. 105-134.6A,~~ G.S. 105-153.6, derived from all sources during the period the individual
30 was a resident.

31 (d) S Corporations and Partnerships. – In order to calculate the numerator of the
32 fraction provided in subsection (b) of this section, the amount of a shareholder's pro rata share
33 of S Corporation ~~income~~ ~~income,~~ as modified in G.S. 105-153.5 and G.S. 105-153.6, that is
34 includable in the numerator is the shareholder's pro rata share of the S Corporation's income
35 attributable to the State, as defined in G.S. 105-131(b)(4). In order to calculate the numerator of
36 the fraction provided in subsection (b) of this section for a member of a partnership or other
37 unincorporated business that has one or more nonresident members and operates in one or more
38 other states, the amount of the member's distributive share of the total net income of the
39 ~~business~~ ~~business,~~ as modified in G.S. 105-153.5 and G.S. 105-153.6, that is includable in the
40 numerator is determined ~~by multiplying the total net income of the business by the ratio~~
41 ~~ascertained under the~~ in accordance with the provisions of G.S. 105-130.4. As used in this
42 subsection, total net income means the entire gross income of the business less all expenses,
43 taxes, interest, and other deductions allowable under the Code that were incurred in the
44 operation of the business.

45 (e) Tax Year. – A taxpayer must compute North Carolina taxable income on the basis
46 of the taxable year used in computing the taxpayer's income tax liability under the Code."

47 **SECTION 2.22.(b)** G.S. 105-153.5 is amended by adding a new subsection to
48 read:

49 "(c1) Other Additions. – S Corporations subject to the provisions of Part 1A of this
50 Article, partnerships subject to the provisions of this Part, and estates and trusts subject to the

1 provisions of Part 3 of this Article must add any amount deducted under section 164 of the
2 Code as state, local, or foreign income tax."

3 **SECTION 2.22.(c)** This section is effective for taxable years beginning on or after
4 January 1, 2015.

5 **SECTION 2.23.(a)** G.S. 105-164.13 reads as rewritten:

6 "**§ 105-164.13. Retail sales and use tax.**

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

10 ...

11 (62) An item used to maintain or repair tangible personal property or a motor
12 vehicle pursuant to a service contract taxable under this Article if the
13 purchaser of the contract is not charged for the item. ~~This exemption does
14 not apply to an item used to maintain or repair tangible personal property
15 pursuant to a service contract exempt from tax under G.S. 105-164.4I(b).~~ For
16 purposes of this exemption, the term "item" does not include a tool,
17 equipment, supply, or similar tangible personal property used to complete
18 the maintenance or repair and that is not deemed to be a component or repair
19 part of the tangible personal property or motor vehicle for which a service
20 contract is sold to a purchaser.

21"

22 **SECTION 2.23.(b)** G.S. 105-187.52(c) reads as rewritten:

23 "(c) Exemption. – State agencies are exempted from the privilege taxes imposed by this
24 Article. The exemption in G.S. 105-164.13(62) does not apply to an item used to maintain or
25 repair tangible personal property pursuant to a service contract exempt from tax under
26 G.S. 105-164.4I(b)(4)."

27 **SECTION 2.23.(c)** Notwithstanding G.S. 105-164.13(62), as amended by S.L.
28 2014-3 and by subsection (a) of this section, the sales and use tax exemption in
29 G.S. 105-164.13(62) applies to an item used pursuant to a service contract that meets the
30 definition of a "service contract" as defined in G.S. 105-164.3(38b), notwithstanding that the
31 service contract was sold before January 1, 2014, and effective on, before, or after January 1,
32 2014.

33 **SECTION 2.23.(d)** This section becomes effective October 1, 2014.

34 **SECTION 2.24.(a)** Purpose. – The purpose of this section is to extend the statute
35 of limitations for requesting a refund of State income taxes to conform to federal tax treatment
36 of the rollover of an airline payment amount by a qualified airline employee to a traditional or
37 Roth IRA so as to prevent double taxation of the amount for State income tax purposes.

38 **SECTION 2.24.(b)** Definitions. – The following definitions apply in this section:

- 39 (1) Airline payment amount. – Defined in section 1106(c)(1) of Public Law
40 112-95, as amended by Public Law 113-243.
41 (2) Qualified airline employee. – Defined in section 1106(c)(2) of Public Law
42 112-95, as amended by Public Law 113-243.

43 **SECTION 2.24.(c)** Extension of Time to File Claim for Refund. – Notwithstanding
44 the general statute of limitations for obtaining a refund of an overpayment of tax under
45 G.S. 105-241.6(a), a qualified airline employee, or the surviving spouse of a qualified airline
46 employee, that meets all of the following conditions may apply to the Department of Revenue
47 for a refund of the State individual income tax paid on the airline payment amount that was
48 transferred to a traditional IRA:

- 49 (1) Received an airline payment amount in a taxable year beginning before
50 January 1, 2012, and included the amount in federal adjusted gross income.

- 1 (2) Transferred any portion of the airline payment amount to a traditional IRA,
2 either directly or indirectly from a Roth IRA, by August 13, 2012.
3 (3) Filed a claim for refund of federal individual income tax paid on the airline
4 payment amount by April 15, 2015, that was accepted by the Internal
5 Revenue Service.

6 **SECTION 2.24.(d)** Late Refund Request. – A request for a refund under this
7 section must be made to the Secretary of Revenue on or before October 15, 2015. A request for
8 a refund received after that date is barred.

9 **SECTION 2.25.** If Senate Bill 20 of the 2015 Regular Session of the 2015 General
10 Assembly becomes law, then Section 2.3 of Senate Bill 20 is repealed.

11
12 **PART III. EFFECTIVE DATE**

13 **SECTION 3.1.** Except as otherwise provided, this act is effective when it becomes
14 law.