

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

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SENATE BILL 174  
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PROPOSED HOUSE COMMITTEE SUBSTITUTE S174-PCS15129-SVxf-6

Short Title: Rev. Laws Tech., Clarifying, & Admin. Chngs.

(Public)

Sponsors:

Referred to:

March 1, 2023

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE VARIOUS TECHNICAL, CLARIFYING, AND ADMINISTRATIVE  
3 CHANGES TO THE REVENUE LAWS.

4 The General Assembly of North Carolina enacts:

5  
6 **PART I. CORPORATE AND INDIVIDUAL INCOME TAX CHANGES**

7 **SECTION 1.1.** G.S. 105-228.90(b)(7) reads as rewritten:

8 "(7) Code. – The Internal Revenue Code as enacted as of April 1, 2021, January 1,  
9 2023, including any provisions enacted as of that date that become effective  
10 either before or after that date."

11 **SECTION 1.2.** G.S. 105-122(b)(2) reads as rewritten:

12 "(2) An addition for the amount of indebtedness the corporation owes to a parent,  
13 a subsidiary, an affiliate, or a noncorporate entity in which the corporation or  
14 group of corporations owns directly or indirectly more than fifty percent  
15 (50%) of the capital interest of the noncorporate entity, unless the  
16 indebtedness creates qualified interest expense, as defined in  
17 G.S. 105-130.7B(b)(4)-G.S. 105-130.7B(b)(4)a. through  
18 G.S. 105-130.7B(b)(4)d."

19 **SECTION 1.3.** G.S. 105-153.4 is amended by adding a new subsection to read:

20 "(d1) Sole Proprietorships. – In order to calculate the numerator of the fraction provided in  
21 subsection (b) of this section for an individual that operates a business in one or more other states,  
22 the amount of an individual's total net income of the business, as modified in G.S. 105-153.5 and  
23 G.S. 105-153.6, that is includable in the numerator is determined in accordance with the  
24 provisions of G.S. 105-130.4. As used in this subsection, total net income means the entire gross  
25 income of the business less all expenses, taxes, interest, and other deductions allowable under  
26 the Code that were incurred in the operation of the business."

27 **SECTION 1.4.** G.S. 105-153.9 is amended by adding a new subsection to read:

28 "(c) The credit allowed under this section may not exceed the amount of tax imposed by  
29 this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax  
30 made by or on behalf of the taxpayer."

31 **SECTION 1.5.(a)** G.S. 105-154(d) reads as rewritten:

32 "(d) Payment of Tax on Behalf of Nonresident Owner or Partner. – If a business conducted  
33 in this State is owned by a nonresident individual or by a partnership having one or more  
34 nonresident members, the business shall report information concerning the earnings of the



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1 business in this State, the distributive share of the income of each nonresident owner or partner,  
2 and any other information required by the Secretary. The distributive share of the income of each  
3 nonresident partner includes any guaranteed payments made to the partner. The business shall  
4 pay with the return the tax on each nonresident owner or partner's share of the income computed  
5 at the rate levied on individuals under G.S. 105-153.7. The business may deduct the payment for  
6 each nonresident owner or partner from the owner or partner's distributive share of the income  
7 of the business in this State. The Secretary may enforce the business's liability for the tax on each  
8 nonresident owner or partner's share of the income by sending the business a notice of proposed  
9 assessment in accordance with G.S. 105-241.9. If the nonresident partner is not an individual and  
10 the partner has executed an affirmation that (i) the partner will pay the tax with its corporate,  
11 partnership, trust, or estate income tax return, or (ii) the partner is not subject to State income tax  
12 under this Article, the business is not required to pay the tax on the partner's share. In this case,  
13 the business shall include a copy of the affirmation with the report required by this subsection.  
14 The affirmation must be annually filed by the nonresident partner and submitted by the due date  
15 of the report required in this subsection. Otherwise, the business is required to pay the tax on the  
16 nonresident partner's share. Notwithstanding the provisions of G.S. 105-241.7(b), the business  
17 may not request a refund of an overpayment made on behalf of a nonresident owner or partner if  
18 the business has previously filed the return and paid the tax due. The nonresident owner or partner  
19 may, on its own income tax return, request a refund of an overpayment made on its behalf by the  
20 business within the provisions of G.S. 105-241.6. This subsection does not apply to a partnership  
21 with respect to any taxable period for which it is a taxed ~~partnership-partnership~~ unless the taxed  
22 partnership has a partner described in G.S. 105-154.1(a)(5). If a taxed partnership has a partner  
23 described in G.S. 105-154.1(a)(5), this subsection applies to the taxed partnership with respect  
24 to the partner described in G.S. 105-154.1(a)(5)."

25 **SECTION 1.5.(b)** G.S. 105-154.1(a) is amended by adding a new subdivision to  
26 read:

27 "(5) A partnership including an entity that is classified as a partnership for federal  
28 income tax purposes, or an S Corporation as defined in G.S. 105-131(b)."

29 **SECTION 1.5.(c)** G.S. 105-154.1(b)(1) reads as rewritten:

30 "(1) The North Carolina taxable income of a taxed partnership with respect to such  
31 taxable period shall be equal to the sum of the ~~following:~~following for partners  
32 defined under G.S. 105-154.1(a)(1) through G.S. 105-154.1(a)(4):

33 ...."

34 **SECTION 1.5.(d)** G.S. 105-153.9, as amended by Section 1.4 of this act, is amended  
35 by adding the following new subsections to read:

36 "(d) Except as otherwise provided in subdivision (a)(5) of this section with respect to a  
37 taxed partnership, for purposes of this section and G.S. 105-160.4, each resident partner is  
38 considered to have paid a tax imposed on the partner in an amount equal to the partner's  
39 distributive share of any income tax paid by the partnership to a state or the District of Columbia  
40 where the partnership was subject to an entity-level tax levied on the aggregate distributive share  
41 of the partnership's income allocable to one or more of its partners. A partnership is taxable in  
42 another state or the District of Columbia if the partnership's business activity in that state or the  
43 District of Columbia subjects the partnership to a net income tax or a tax measured by net income.

44 (e) Except as otherwise provided in subdivision (a)(4) of this section with respect to a  
45 taxed S Corporation, for purposes of this section and G.S. 105-160.4, each resident shareholder  
46 is considered to have paid a tax imposed on the shareholder in an amount equal to the  
47 shareholder's pro rata share of any income tax paid by the S Corporation to a state or the District  
48 of Columbia where the S Corporation was subject to an entity-level tax levied on the aggregate  
49 pro rata share of the S Corporation's income allocable to one or more of its shareholders. An S  
50 Corporation is taxable in another state or the District of Columbia if the S Corporation's business  
51 activity in that state or the District of Columbia subjects the S Corporation to a net income tax or

1 a tax measured by net income. A taxpayer that claims a credit under this subsection may not also  
2 claim a credit under G.S. 105-131.8 with respect to the same income tax paid by the S  
3 Corporation."

4 **SECTION 1.5.(e)** This section is effective for taxable years beginning on or after  
5 January 1, 2022.

6 **SECTION 1.6.(a)** The following statutes are repealed:

- 7 (1) G.S. 105-131.1A(b)(1)b.
- 8 (2) G.S. 105-131.1A(d)
- 9 (3) G.S. 105-153.9(a)(4)
- 10 (4) G.S. 105-153.9(a)(5)
- 11 (5) G.S. 105-154.1(b)(1)b.

12 **SECTION 1.6.(b)** G.S. 105-131.1A(a) reads as rewritten:

13 "(a) Taxed S Corporation Election. – An S Corporation may elect, on its timely filed  
14 ~~annual~~-return required under G.S. 105-131.7, to have the tax under this Article imposed on the S  
15 Corporation for any taxable period covered by the return. An S Corporation may not make or  
16 revoke the election after the due date of the return including extensions-return is filed."

17 **SECTION 1.6.(c)** G.S. 105-153.5(c3) reads as rewritten:

18 "(c3) Taxed Pass-Through Entities. – In calculating North Carolina taxable income, a  
19 taxpayer must make the following adjustments to the taxpayer's adjusted gross income:

- 20 (1) A taxpayer that is a shareholder of a taxed S Corporation may deduct the  
21 amount of the taxpayer's pro rata share of income attributable to the State from  
22 the taxed S Corporation to the extent ~~it~~ the income attributable to the State  
23 was included in the taxed S Corporation's North Carolina taxable income and  
24 was included in the taxpayer's adjusted gross income-income, subject to the  
25 adjustments provided in G.S. 105-153.5 and G.S. 105-153.6, attributable to  
26 the State.

- 27 (1a) A resident taxpayer that is a shareholder of an S Corporation may deduct the  
28 amount of the taxpayer's pro rata share of income not attributable to the State  
29 from the S Corporation to the extent the income not attributable to the State  
30 was included in the S Corporation's taxable income in another state or the  
31 District of Columbia, was subject to an entity-level tax levied on the aggregate  
32 pro rata share of the S Corporation's income allocable to one or more of its  
33 shareholders, and was included in the taxpayer's adjusted gross income subject  
34 to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6. An S  
35 Corporation is taxable in another state or the District of Columbia if the S  
36 Corporation's business activity in that state or the District of Columbia  
37 subjects the S Corporation to a net income tax or a tax measured by net  
38 income.

- 39 (2) A taxpayer that is a shareholder of a taxed S Corporation must add the amount  
40 of the taxpayer's pro rata share of net taxable loss attributed to the State from  
41 the taxed S Corporation to the extent ~~it~~ the net taxable loss was included in the  
42 taxed S Corporation's North Carolina taxable income and was included in the  
43 taxpayer's adjusted gross ~~income-income~~, subject to the adjustments provided  
44 in G.S. 105-153.5 and G.S. 105-153.6, attributable to the State.

- 45 (3) A taxpayer that is a partner of a taxed partnership may deduct the amount of  
46 the taxpayer's share of distributive share of income attributable to the State  
47 from the taxed partnership to the extent ~~it~~ the share of distributive income  
48 attributable to the State was included in the taxed partnership's North Carolina  
49 taxable income and was included in the taxpayer's adjusted gross  
50 ~~income-income~~, subject to the adjustments provided in G.S. 105-153.5 and  
51 G.S. 105-153.6, attributable to the State.

1           (3a) A resident taxpayer that is a partner of a partnership may deduct the amount  
 2 of the taxpayer's share of distributive income not attributable to the State from  
 3 the partnership to the extent the share of distributive income not attributable  
 4 to the State was included in the partnership's taxable income in another state  
 5 or the District of Columbia, was subject to an entity-level tax levied on the  
 6 aggregate distributive share of the partnership's income allocable to one or  
 7 more of its partners, and was included in the taxpayer's adjusted gross income  
 8 subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6. A  
 9 partnership is taxable in another state or the District of Columbia if the  
 10 partnership's business activity in that state or the District of Columbia subjects  
 11 the partnership to a net income tax or a tax measured by net income.

12           (4) A taxpayer that is a partner of a taxed partnership must add the amount of the  
 13 taxpayer's share of distributive share of taxable loss attributable to the State  
 14 from the taxed partnership to the extent ~~it~~ the share of distributive taxable loss  
 15 attributable to the State was included in the taxed partnership's North Carolina  
 16 taxable income and was included in the taxpayer's adjusted gross  
 17 income-income, subject to the adjustments provided in G.S. 105-153.5 and  
 18 G.S. 105-153.6, attributable to the State."

19           **SECTION 1.6.(d)** G.S. 105-153.9, as amended by Sections 1.4, 1.5(d), and 1.6(a) of  
 20 this act, reads as rewritten:

21 **"§ 105-153.9. Tax credits for income taxes paid to other states by individuals.**

22           ...  
 23           ~~(d) Except as otherwise provided in subdivision (a)(5) of this section with respect to a~~  
 24 ~~taxed partnership, for~~ For purposes of this section and G.S. 105-160.4, each resident partner is  
 25 considered to have paid a tax imposed on the partner in an amount equal to the partner's  
 26 distributive share of any income tax paid by the partnership to a state or the District of Columbia  
 27 where the partnership was subject to an entity-level tax levied on the aggregate distributive share  
 28 of the partnership's income allocable to one or more of its partners. A partnership is taxable in  
 29 another state or the District of Columbia if the partnership's business activity in that state or the  
 30 District of Columbia subjects the partnership to a net income tax or a tax measured by net income.

31           ~~(e) Except as otherwise provided in subdivision (a)(4) of this section with respect to a~~  
 32 ~~taxed S Corporation, for~~ For purposes of this section and G.S. 105-160.4, each resident  
 33 shareholder is considered to have paid a tax imposed on the shareholder in an amount equal to  
 34 the shareholder's pro rata share of any income tax paid by the S Corporation to a state or the  
 35 District of Columbia where the S Corporation was subject to an entity-level tax levied on the  
 36 aggregate pro rata share of the S Corporation's income allocable to one or more of its  
 37 shareholders. An S Corporation is taxable in another state or the District of Columbia if the S  
 38 Corporation's business activity in that state or the District of Columbia subjects the S Corporation  
 39 to a net income tax or a tax measured by net income. A taxpayer that claims a credit under this  
 40 subsection may not also claim a credit under G.S. 105-131.8 with respect to the same income tax  
 41 paid by the S Corporation.

42           (f) No credit is allowed under this section for taxes paid to another state or the District  
 43 of Columbia on income eligible for the deduction provided in G.S. 105-153.5(c3)."

44           **SECTION 1.6.(e)** G.S. 105-154.1(a), as amended by Section 1.5(b) of this act, reads  
 45 as rewritten:

46           "(a) Taxed Partnership Election. – A partnership may elect, on its timely filed ~~annual~~  
 47 return required under G.S. 105-154(c), to have the tax under this Article imposed on the  
 48 partnership for any taxable period covered by the return. A partnership may not make or revoke  
 49 the election after the ~~due date of the return, including extensions.~~ return is filed. This election  
 50 cannot be made by a publicly traded partnership that is described in section 7704(c) of the Code

1 or by a partnership that has at any time during the taxable year a partner who is not one of the  
2 following:

- 3 (1) An individual.
- 4 (2) An estate.
- 5 (3) A trust described in section 1361(c)(2) of the Code.
- 6 (4) An organization described in section 1361(c)(6) of the Code.
- 7 (5) A partnership including an entity that is classified as a partnership for federal  
8 income tax purposes, or an S Corporation as defined in G.S. 105-131(b)."

9 **SECTION 1.6.(f)** This section is effective for taxable years beginning on or after  
10 January 1, 2023.

11 **SECTION 1.7.(a)** G.S. 105-249.2(b) reads as rewritten:

12 "(b) Disaster. – The penalties in G.S. 105-236(a)(2), (3), ~~and (4)-(4), and (10)c.~~ may not  
13 be assessed for any period in which the time for filing a federal return or report or for paying a  
14 federal tax is extended under section 7508A of the Code because of a presidentially declared  
15 disaster. The extension of time granted by the Internal Revenue Service under section 7508A of  
16 the Code only applies to the corresponding State tax return or payment. For State returns and  
17 payments without a corresponding federal return and payment, the extension granted for  
18 individual income tax returns and payments by the Internal Revenue Service under section 7508A  
19 of the Code applies. For the purpose of this section, "presidentially declared disaster" has the  
20 same meaning as in section 1033(h)(3) of the Code."

21 **SECTION 1.7.(b)** This section is effective when it becomes law and applies to  
22 presidentially declared disasters occurring on or after that date.

23 **SECTION 1.8.** Except as otherwise provided, this Part is effective when it becomes  
24 law.

## 25 **PART II. SALES TAX CHANGES**

26 **SECTION 2.1.(a)** G.S. 105-164.3(179) reads as rewritten:

27 "~~(179) Prepared food. – Food that meets at least one of the conditions of this~~  
28 ~~subdivision. Prepared food does not include food the retailer sliced,~~  
29 ~~repackaged, or pasteurized but did not heat, mix, or sell with eating~~  
30 ~~utensils.~~Defined in G.S. 105-164.4L.

31 a. ~~It is sold in a heated state or it is heated by the retailer.~~

32 b. ~~It consists of two or more foods mixed or combined by the retailer for~~  
33 ~~sale as a single item. This sub-subdivision does not include foods~~  
34 ~~containing raw eggs, fish, meat, or poultry that require cooking by the~~  
35 ~~consumer as recommended by the Food and Drug Administration to~~  
36 ~~prevent food borne illnesses.~~

37 e. ~~It is sold with eating utensils provided by the retailer, such as plates,~~  
38 ~~knives, forks, spoons, glasses, cups, napkins, and straws. A plate does~~  
39 ~~not include a container or packaging used to transport the food."~~

40 **SECTION 2.1.(b)** Article 5 of Chapter 105 of the General Statutes is amended by  
41 adding the following new section to read:

### 42 **"§ 105-164.4L. Prepared food.**

43 (a) Prepared Food Definition. – The term "prepared food" means food that meets at least  
44 one of the following conditions:

45 (1) It is sold in a heated state, or it is heated by the retailer.

46 (2) It consists of two or more foods mixed or combined by the retailer for sale as  
47 a single item. This does not include:

48 a. Food containing raw eggs, fish, meat, or poultry that requires cooking  
49 by the consumer as recommended by the Food and Drug  
50 Administration.

- 1                    Administration in chapter 3, part 401.11 of its Food Code so as to  
2                    prevent foodborne illnesses.
- 3                    b. Food that is only sliced, repackaged, or pasteurized by the retailer.  
4                    (3) It is sold with eating utensils provided by the retailer, such as plates, knives,  
5                    forks, spoons, glasses, cups, napkins, and straws. A plate does not include a  
6                    container or packaging used to transport the food. An eating utensil placed in  
7                    a package with the food items by a person other than the retailer, if that other  
8                    person's NAICS classification code is that of a manufacturer, sector 311, is  
9                    not treated as an eating utensil provided by the retailer. For a packager with  
10                   any other NAICS classification code, the retailer is considered to have  
11                   provided the eating utensil.
- 12                   (b) Utensils Provided by the Retailer. – Based on a retailer's prepared food sales  
13                   percentage, determined in accordance with subsection (c) of this section, the phrase "provided  
14                   by the retailer," as described in subdivision (3) of subsection (a) of this section, has the following  
15                   meanings:
- 16                   (1) Sales percentage of greater than seventy-five percent (75%). – If a retailer has  
17                   a prepared food sales percentage of greater than seventy-five percent (75%),  
18                   "provided by the retailer" means the retailer makes eating utensils available to  
19                   purchasers, except that an item sold by the retailer containing four or more  
20                   servings packaged as one item and sold for a single price does not become  
21                   prepared food because the retailer makes utensils available to the purchaser of  
22                   the item, but is prepared food if the retailer physically gives or hands utensils  
23                   to the purchaser of the item. Serving sizes are determined based on the label  
24                   of an item sold. If no label is available, a retailer must reasonably determine  
25                   the number of servings in an item.
- 26                   (2) Sales percentage of seventy-five percent (75%) or less. – If a retailer has a  
27                   prepared food sales percentage of seventy-five percent (75%) or less,  
28                   "provided by the retailer" means the retailer's business practice is to physically  
29                   give or hand eating utensils to purchasers, except that plates, bowls, glasses,  
30                   and cups necessary for the purchaser to receive the food need only be made  
31                   available to purchasers.
- 32                   (c) Prepared Food Sales Percentage. –
- 33                   (1) Definition. – A percentage determined by dividing the following described  
34                   numerator by the following described denominator:
- 35                   a. The numerator is the retailer's annual sales of prepared food described  
36                   in subdivisions (1) and (2) of subsection (a) of this section and food  
37                   sold when plates, bowls, glasses, or cups are necessary to receive the  
38                   food. The numerator shall not include alcoholic beverages or food  
39                   excluded from prepared food.
- 40                   b. The denominator is the retailer's total annual sales of all food and  
41                   prepared food, excluding alcoholic beverages.
- 42                   (2) Administration of definition. –
- 43                   a. A retailer must calculate the prepared food sales percentage for each  
44                   tax year or business fiscal year based on the retailer's data from the  
45                   prior tax year or business fiscal year, as soon as possible after  
46                   accounting records are available, but not later than 90 days after the  
47                   beginning of the retailer's tax year or business fiscal year.
- 48                   b. A single prepared food sales percentage shall be determined annually  
49                   for all of the retailer's establishments in this State.
- 50                   c. A new retailer shall make a good-faith estimate of its prepared food  
51                   sales percentage for its first year in business. The new retailer must

1 adjust its good-faith estimate prospectively after the first three months  
2 of its business operation if actual prepared food sales percentages  
3 materially affect the seventy-five percent (75%) threshold described in  
4 subsection (b) of this section."

5 **SECTION 2.2.** G.S. 105-164.4J is amended by adding a new subsection to read:

6 "(k) Efficient Administration. – When the Secretary finds it necessary for the efficient  
7 administration of this Article to regard any sales representatives, solicitors, representatives,  
8 consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors,  
9 employers, or persons under whom they operate or from whom they obtain the items sold by  
10 them regardless of whether they are making sales on their own behalf or on behalf of these  
11 dealers, distributors, consignors, supervisors, employers, or persons, the Secretary may so regard  
12 them and may regard the dealers, distributors, consignors, supervisors, employers, or persons as  
13 "marketplace facilitators" for the purpose of this Article and may treat the sales they make as  
14 "marketplace-facilitated sales" and the sellers as "marketplace sellers.""

15 **SECTION 2.3.** G.S. 105-164.11B reads as rewritten:

16 **"§ 105-164.11B. Recover sales tax paid.**

17 (a) Retailers. – A retailer who pays sales and use tax on an item that is separately stated  
18 on an invoice or similar billing document given to the retailer at the time of sale and subsequently  
19 resells the item at retail, without the item being used by the retailer, may recover the sales or use  
20 tax originally paid to a seller as provided in this ~~section~~-subsection. A retailer entitled to recover  
21 tax under this ~~section~~-subsection may reduce taxable receipts by the taxable amount of the  
22 purchase price of the item resold for the period in which the retail sale occurs. A recovery of tax  
23 allowed under this ~~section~~-subsection is not an overpayment of tax and, where ~~such~~-the recovery  
24 is taken, a refund of the tax originally paid may not be requested from the seller pursuant to the  
25 authority under G.S. 105-164.11. Any amount for tax recovered under this ~~section~~-subsection in  
26 excess of tax due for a reporting period under this Article is not subject to refund. Any tax  
27 recovered under this ~~section~~-subsection may be carried forward to a subsequent reporting period  
28 and taken as an adjustment to taxable receipts. The records of the retailer must clearly reflect and  
29 support the adjustment to taxable receipts for the period in which the adjustment is made.

30 (b) Marketplace Facilitators. – A marketplace facilitator may recover the sales or use tax  
31 originally paid to a marketplace seller as provided in this subsection when the marketplace  
32 facilitator pays sales and use tax to a marketplace seller on a marketplace-facilitated sale for  
33 which the marketplace facilitator is considered the retailer pursuant to G.S. 105-164.4J(b), and  
34 the tax is separately stated on an invoice or similar billing document given to the marketplace  
35 facilitator at the time of sale. A marketplace facilitator entitled to recover tax under this  
36 subsection may reduce taxable receipts by the taxable amount of the marketplace-facilitated sale  
37 that is taxed by the marketplace seller for the period in which the retail sale occurs. A recovery  
38 of tax allowed under this subsection is not an overpayment of tax and, where the recovery is  
39 taken, a refund of the tax originally paid may not be requested from the seller pursuant to the  
40 authority under G.S. 105-164.11. Any amount for tax recovered under this subsection in excess  
41 of tax due for a reporting period under this Article is not subject to refund. Any tax recovered  
42 under this subsection may be carried forward to a subsequent reporting period and taken as an  
43 adjustment to taxable receipts. The records of the retailer must clearly reflect and support the  
44 adjustment to taxable receipts for the period in which the adjustment is made."

45 **SECTION 2.4.(a)** G.S. 105-164.13 reads as rewritten:

46 **"§ 105-164.13. Retail sales and use tax.**

47 The sale at retail and the use, storage, or consumption in this State of the following items are  
48 specifically exempted from the tax imposed by this Article:

49 ...

50 (11) Any of the following fuel:

- a. Motor fuel, as taxed in Article 36C of this Chapter, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105A, G.S. 105-449.106(c), G.S. 105-449.106(d), or G.S. 105-449.107.
- b. Alternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under G.S. 105-449.106(d) or G.S. 105-449.107.

...."

**SECTION 2.4.(b)** G.S. 105-164.13 reads as rewritten:

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

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

...

- (35) Sales by a nonprofit civic, charitable, educational, scientific, literary, or fraternal organization when all of the conditions listed in this subdivision are met. This exemption does not apply to gross receipts derived from an admission charge to an entertainment activity. The conditions are:
  - a. The sales are conducted only upon an annual basis for the purpose of raising funds for the organization's activities.
  - b. The proceeds of the sale are actually used for the organization's activities.
  - c. The products sold are delivered to the purchaser within 60 days after the first solicitation of any sale made during the organization's annual sales period.
  - d. Each annual sales period occurs at least 60 days after the beginning of the prior annual sales period.
  - e. Each annual sales period funds a distinct and different program from the other annual sales periods occurring during the year.
  - f. Each annual sales period sells products that are distinct and different from the products sold during the other annual sales periods occurring during the year.

...."

**SECTION 2.4.(c)** Subsection (a) of this section is effective retroactively to January 1, 2023, and applies to applications for refunds submitted on or after that date. The remainder of this section is effective when it becomes law.

**SECTION 2.5.** G.S. 105-164.3(259) reads as rewritten:

"(259) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of ~~December 21, 2021.~~December 22, 2022."

**SECTION 2.6.** Except as otherwise provided, this Part is effective when it becomes law.

**PART III. EXCISE TAX CHANGES**

**SECTION 3.1.** G.S. 105-113.4(13a) reads as rewritten:

"(13a) Vapor product. – Any nonlighted, noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to produce vapor from ~~nicotine~~ nicotine, however derived, in a solution. The term includes any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term does not include any product regulated by



1 the United States Food and Drug Administration under Chapter V of the  
2 federal Food, Drug, and Cosmetic Act."

3 **SECTION 3.2.(a)** G.S. 105-113.4(2) reads as rewritten:

4 "(2) Cost price. – The actual price ~~paid~~ paid by the person liable for the tax, before  
5 any discount, rebate, or allowance, for an item identified as a stock keeping  
6 unit by a unique code or identifier representing the item that is subject to the  
7 tax imposed by Part 3 of this Article by the person liable for the tax. The actual  
8 price paid for an item may be either of the following: Article.

9 a. ~~The actual price paid for an item identified as a stock keeping unit by~~  
10 ~~a unique code or identifier representing the item.~~

11 b. ~~If the actual price paid for an item is not available, the average of the~~  
12 ~~actual price paid for the item over the 12 calendar months before~~  
13 ~~January 1 of the year in which the sale occurs."~~

14 **SECTION 3.2.(b)** G.S. 105-113.36A(f) reads as rewritten:

15 "(f) Documentation. – If a person liable for the tax imposed by this Part cannot produce  
16 to the Secretary's satisfaction documentation of the cost price of the items subject to tax, the  
17 Secretary may determine a value based on ~~the~~ either of the following:

18 (1) The cost price of comparable items.

19 (2) The average of the actual price paid by the person liable for the tax for the  
20 item over the 12 calendar months before January 1 of the year in which the  
21 sale occurs."

22 **SECTION 3.3.** G.S. 105-113.4A(e) reads as rewritten:

23 "(e) Duplicate or Amended License. – Upon application to the Secretary, a licensee may  
24 obtain without charge a duplicate or amended license as ~~provided in this subsection. A duplicate~~  
25 ~~or amended license must state that it is a duplicate or amended license, as appropriate:~~ follows:

26 (1) A duplicate license, if the licensee establishes that the original license has been  
27 lost, destroyed, or defaced.

28 (2) An amended license, if the licensee establishes that the location of the place  
29 of business for which the license was issued has changed."

30 **SECTION 3.4.(a)** G.S. 105-113.4F(c) reads as rewritten:

31 "(c) Filing Requirement. – A delivery seller who has made a delivery sale, or shipped or  
32 delivered tobacco products in connection with a delivery sale, for which tax is due under this  
33 Article, during the previous month shall, not later than the tenth day of each month, file with the  
34 Secretary a memorandum or a copy of the invoice for every delivery sale made during the  
35 previous month. A delivery seller who complies with 15 U.S.C. § 376 with respect to tobacco  
36 products covered by that section is considered to have complied with this subsection. The  
37 memorandum or invoice shall contain the following information:

38 (1) The name, address, telephone number, and e-mail address of the consumer.

39 (2) The type and the brand, or brands, of tobacco products that were sold.

40 (3) The quantity of tobacco products that were sold."

41 **SECTION 3.4.(b)** This section is effective when this act becomes law and applies  
42 to filings due on or after that date for sales made during the previous month.

43 **SECTION 3.5.(a)** G.S. 105-113.4G reads as rewritten:

44 "§ 105-113.4G. **Records to be kept.**

45 (a) Requirement. – Every person required to be licensed under this Article and every  
46 person required to make reports under this Article shall keep complete and accurate records of  
47 all purchases, inventories, sales, shipments, and deliveries of tobacco products, and other  
48 information as required ~~under this Article.~~ by the Secretary. The records shall be in the form  
49 prescribed by the Secretary and shall be open at all times for inspection by the Secretary or an  
50 authorized representative of the Secretary.

1       (b) Time Period. – These records shall be safely preserved for a ~~period of three years~~ the  
2 applicable period of statute of limitations as set forth in Article 9 of this Chapter in a manner to  
3 ensure their security and accessibility for inspection by the Department. If the records apply to a  
4 transaction not required to be reported in a return, the records shall be kept for three years from  
5 the date of the transaction."

6       **SECTION 3.5.(b)** This section is effective when this act becomes law and applies  
7 to records for transactions occurring on or after that date.

8       **SECTION 3.6.** G.S. 105-113.12(a) reads as rewritten:

9       "(a) A distributor must obtain a license for each of the locations listed in this subsection,  
10 as applicable, and must pay a tax of twenty-five dollars (\$25.00) for each license. A license is in  
11 effect until June 30 of the year following the second calendar year after the date of issuance or  
12 renewal. A license is renewable upon signed application with no renewal license tax, unless  
13 applied for after the June 30 expiration date. The locations are:

- 14           (1) Each location where a distributor receives or stores non-tax-paid cigarettes in  
15 this State.
- 16           (2) For a distributor that is a delivery seller, each location from which the  
17 distributor ~~ships~~ receives or stores non-tax-paid cigarettes for delivery sales  
18 of cigarettes if the location is a location other than the location described in  
19 subdivision (1) of this subsection."

20       **SECTION 3.7.** G.S. 105-113.38B reads as rewritten:

21       "**§ 105-113.38B. Records.**

22       In addition to the records required to be kept under G.S. 105-113.4G, a remote seller required  
23 to be licensed must maintain the following:

- 24           (1) A list, updated annually, showing the cost price paid by the remote seller for  
25 each stock keeping unit of tobacco products.
- 26           (2) Invoices documenting remote or delivery sales to consumers in this State.
- 27           (3) Records necessary to document the cost price of purchases of all tobacco  
28 products sold to consumers in this State."

29       **SECTION 3.8.(a)** G.S. 105-113.39A reads as rewritten:

30       "**§ 105-113.39A. License required.**

31       (a) Requirement. – A wholesale dealer or a retail dealer must obtain from the Secretary  
32 a license for each of the locations listed in this subsection, as applicable, and must pay the  
33 required license tax for each license. A license is in effect until June 30 of the year following the  
34 second calendar year after the date of issuance or renewal, unless cancelled or revoked prior to  
35 expiration. A license is renewable upon signed application with no renewal license tax, unless  
36 applied for after the June 30 expiration date. The locations are:

- 37           (1) Each location where a wholesale dealer makes tobacco products.
- 38           (2) Each location where a wholesale dealer or a retail dealer receives or stores  
39 non-tax-paid tobacco products.
- 40           (3) Each location from where a retail dealer that is a delivery seller or remote  
41 seller ~~ships~~ receives or stores non-tax-paid tobacco products for delivery sales  
42 or remote sales if the location is a location other than the location described  
43 in subdivision (2) of this subsection.

44       ...."

45       **SECTION 3.8.(b)** G.S. 105-113.39A, as amended by subsection (a) of this section,  
46 reads as rewritten:

47       "**§ 105-113.39A. License required.**

48       (a) Requirement. – A wholesale dealer or a retail dealer must obtain from the Secretary  
49 a license ~~for each of the locations listed in this subsection, as applicable,~~ in accordance with  
50 subsections (a1) and (a2) of this section and must pay the required license tax for each license.  
51 A license is in effect until June 30 of the year following the second calendar year after the date

1 of issuance or renewal, unless cancelled or revoked prior to expiration. A license is renewable  
2 upon signed application with no renewal license tax, unless applied for after the June 30  
3 expiration date. ~~The locations are:~~

4 (a1) Other Tobacco Products License. – A wholesale dealer or a retail dealer must obtain  
5 an other tobacco products license for all of the following locations:

6 (1) Each location where a wholesale dealer makes tobacco ~~products-products~~  
7 other than vapor products.

8 (2) Each location where a wholesale dealer or a retail dealer receives or stores  
9 non-tax-paid tobacco ~~products-products~~ other than vapor products.

10 (3) Each location from where a retail dealer that is a delivery seller or remote  
11 seller receives or stores non-tax-paid tobacco products for delivery sales or  
12 remote sales of tobacco products other than vapor products if the location is a  
13 location other than the location described in subdivision (2) of this subsection.

14 (a2) Vapor Products License. – A wholesale dealer or a retail dealer must obtain a vapor  
15 products license for all of the following locations:

16 (1) Each location where a wholesale dealer makes vapor products.

17 (2) Each location where a wholesale dealer or a retail dealer receives or stores  
18 non-tax-paid vapor products.

19 (3) Each location from where a retail dealer that is a delivery seller or a remote  
20 seller receives or stores non-tax-paid vapor products for delivery sales if the  
21 location is a location other than the location described in subdivision (2) of  
22 this subsection.

23 (b) License Tax Amount. – The license tax amounts are as follows:

24 (1) Wholesale dealer \$25.00

25 (2) Retail dealer \$10.00

26 (c) Out-of-State Wholesale Dealers. – An out-of-state wholesale dealer of tobacco  
27 products that is not a delivery seller or a remote seller may obtain a wholesale dealer's license  
28 upon compliance with the provisions of G.S. 105-113.4A and payment of a tax of twenty-five  
29 dollars (\$25.00)."

30 **SECTION 3.8.(c)** Subsection (b) of this section becomes effective July 1, 2024, and  
31 applies to licenses issued on or after that date. The remainder of this section is effective when it  
32 becomes law.

33 **SECTION 3.9.(a)** G.S. 105-113.88 reads as rewritten:

34 "**§ 105-113.88. Record-keeping requirements.**

35 A person who is required to file a report or return under this Article must keep a record of all  
36 documents used to determine information the person provides in a report or ~~return-return~~ and  
37 any other information required by the Secretary to determine the person's alcoholic beverage  
38 transactions. The records must be kept for three years from the due date of the report or return to  
39 which the records apply-the applicable period of statute of limitations as set forth under Article  
40 9 of this Chapter. If the records apply to a transaction not required to be reported in a return, the  
41 records must be kept for three years from the date of the transaction. The Secretary or the  
42 Secretary's designee has the right at any reasonable time to inspect records."

43 **SECTION 3.9.(b)** This section is effective when this act becomes law and applies  
44 to documents required to be kept for transactions occurring on or after that date. The authority of  
45 the Secretary or the Secretary's designee to inspect records at any reasonable time is ongoing and  
46 is not limited to records for transactions occurring on or after the effective date of this section.

47 **SECTION 3.10.** G.S. 105-449.39 reads as rewritten:

48 "**§ 105-449.39. Credit for payment of motor fuel tax.**

49 (a) Credit. – Every motor carrier subject to the tax levied by this Article is entitled to a  
50 credit ~~on its quarterly return~~ for tax paid by the carrier on fuel purchased in the State. The amount  
51 of the credit is determined using the tax rate in effect under G.S. 105-449.80 for the ~~time period~~

1 ~~covered by the return.~~ date the fuel is placed into the qualified motor vehicle. To obtain a credit,  
 2 the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the  
 3 credit is claimed has been paid.

4 (b) Refund. – If the amount of a credit to which a motor carrier is entitled for a quarter  
 5 exceeds the motor carrier's liability for that quarter, the excess is refundable in accordance with  
 6 G.S. 105-241.7."

7 **SECTION 3.11.** G.S. 105-449.42 reads as rewritten:

8 "**§ 105-449.42. Payment of tax.**

9 The tax levied by this Article is due when ~~a motor carrier files~~ a quarterly return is due under  
 10 G.S. 105-449.45. The amount of tax due is calculated on the amount of motor fuel or alternative  
 11 fuel used by the motor carrier in its operations within this State during the quarter covered by the  
 12 return. If a motor carrier is exempt from filing a return under G.S. 105-449.45(b)(2), the tax  
 13 levied by this Article is due when the tax becomes collectible under G.S. 105-241.22."

14 **SECTION 3.12.** G.S. 105-449.45 reads as rewritten:

15 "**§ 105-449.45. Returns of carriers.**

16 (a) Return. – A motor carrier must report its operations to the Secretary on a quarterly  
 17 basis unless subsection (b) of this section exempts the motor carrier from this requirement. A  
 18 quarterly return covers a calendar quarter and is due by the last day ~~in April, July, October, and~~  
 19 ~~January.~~ of the month following the quarter. A return must be filed in the form required by the  
 20 Secretary.

21 (b) Exemptions. – A motor carrier is not required to file a quarterly return if any of the  
 22 following applies:

23 (1) All the motor carrier's operations during the quarter were made under a  
 24 temporary permit issued under G.S. 105-449.49.

25 (2) The motor carrier is an intrastate motor carrier, as indicated on the motor  
 26 carrier's application for licensure with the ~~Secretary.~~ Secretary, and operates  
 27 exclusively in North Carolina.

28 ...."

29 **SECTION 3.13.(a)** G.S. 105-449.46 reads as rewritten:

30 "**§ 105-449.46. ~~Inspection of books and records.~~ Record-keeping requirements; inspection**  
 31 **authority.**

32 (a) Record Keeping. – An interstate motor carrier shall maintain records in accordance  
 33 with any cooperative agreements entered into in accordance with G.S. 105-449.57 and shall  
 34 maintain any other information required by the Secretary. An intrastate motor carrier shall  
 35 maintain records to determine the person's motor fuel or alternative fuel transactions and any  
 36 other information as required by the Secretary. The intrastate motor carrier shall keep the records  
 37 for four years after the date of the transaction.

38 (b) Inspection. – The Secretary and ~~his~~ the Secretary's authorized agents and  
 39 representatives shall have the right at any reasonable time to inspect the books and records of any  
 40 motor carrier subject to the tax imposed by this Article or to the registration fee imposed by  
 41 Article 3 of Chapter 20 of the General Statutes."

42 **SECTION 3.13.(b)** This section is effective when this act becomes law and applies  
 43 to records for transactions occurring on or after that date. The authority of the Secretary and the  
 44 Secretary's authorized agents to inspect the books and records at any reasonable time is ongoing  
 45 and is not limited to records for transactions occurring on or after the effective date of this section.

46 **SECTION 3.14.** G.S. 105-449.47 reads as rewritten:

47 "**§ 105-449.47. Licensure of vehicles.**

48 ...

49 (a1) License and Decal. – When the Secretary licenses a motor carrier, the Secretary must  
 50 issue a license for the motor carrier and a set of decals for each qualified motor vehicle. A motor  
 51 carrier must keep records of decals issued to it and must be able to account for all decals it

1 receives from the Secretary. Licenses and decals issued by the Secretary are for a calendar year.  
 2 All decals issued by the Secretary remain the property of the State. The Secretary may revoke a  
 3 license or a decal when a motor carrier fails to comply with this Article or Article 36C or 36D of  
 4 this Subchapter.

5 (a2) A-Carrying License and Displaying Decal. – Except as provided in subsection (a3) of  
 6 this section, a motor carrier must carry a copy of its current calendar year license in each qualified  
 7 motor vehicle operated by the motor carrier when the vehicle is in this State. Unless operating  
 8 under a temporary permit under G.S. 105-449.49, G.S. 105-449.49 or operating under the grace  
 9 period in accordance with subsection (a3) of this section, a qualified motor vehicle must clearly  
 10 display one current calendar year decal on each side of the vehicle at all times. A decal must be  
 11 affixed to the qualified motor vehicle for which it was issued in the place and manner designated  
 12 by the authority that issued it.

13 (a3) Grace Period. – Motor carriers shall have through the last day of February to display  
 14 the current calendar year decals on the qualified motor vehicle and carry a copy of its current  
 15 calendar year license in the qualified motor vehicle. To be eligible for the grace period, the motor  
 16 carrier shall do the following:

- 17 (1) Hold an active motor carrier license as of December 31 of the preceding  
 18 calendar year issued by the Department or issued by another jurisdiction  
 19 pursuant to the International Fuel Tax Agreement.
- 20 (2) Submit an application for licensure to the Department on or before December  
 21 31 of the preceding year.
- 22 (3) Display the previous calendar year's decal issued by the Department or issued  
 23 by another jurisdiction pursuant to the International Fuel Tax Agreement.
- 24 (4) Carry a copy of the previous calendar year's license in the qualified motor  
 25 vehicle issued by the Department or issued by another jurisdiction.

26 ...."

27 **SECTION 3.15.** G.S. 105-449.61(a) reads as rewritten:

28 "(a) No Local Tax. – A county or city may not impose a tax on the sale, distribution, or  
 29 use of motor fuel, except motor fuel for which a refund of the per gallon excise tax is allowed  
 30 under ~~G.S. 105-449.105A~~ or ~~G.S. 105-449.107~~.G.S. 105-449.105A, 105-449.106(d), or  
 31 105-449.107."

32 **SECTION 3.16.** G.S. 105-449.97 reads as rewritten:

33 "**§ 105-449.97. Deductions and discounts allowed a supplier when filing a return.**

34 (a) Taxes Not Remitted. – When a supplier files a return, the supplier may deduct from  
 35 the amount of tax payable with the return the amount of tax any of the following licensees owes  
 36 the supplier but failed to remit to the supplier:

- 37 (1) A licensed distributor.
- 38 (2) A licensed importer that removed the motor fuel on which the tax is due from  
 39 a terminal of an elective or a permissive supplier.
- 40 (3) Repealed by Session Laws 1995, c. 647, s. 32.

41 (a1) Tax Paid After Deduction. – A supplier is not liable for tax a licensee listed in this  
 42 subsection (a) of this section owes the supplier but fails to pay. If a listed licensee pays tax owed  
 43 to a supplier after the supplier deducts the amount on a return, the supplier must promptly remit  
 44 the payment to the Secretary.

45 ...

46 (e) Credit for Motor Fuel in Terminal. – When filing a return, a licensed supplier who is  
 47 the position holder may take a credit for tax-paid motor fuel in the terminal system."

48 **SECTION 3.17.** G.S. 105-449.106(a) reads as rewritten:

49 "(a) Nonprofits. – A nonprofit organization listed below that purchases and uses motor  
 50 fuel may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate

1 equal to the tax rate in effect under G.S. 105-449.80 for the time period for which the refund is  
2 claimed, less one cent (1¢) per gallon.

3 ~~An application for a refund allowed under this subsection must be made in accordance with  
4 this Part and must be signed by the chief executive officer of the organization. The chief  
5 executive officer of a nonprofit organization is the president of the organization or another officer  
6 of the organization designated in the charter or bylaws of the organization.~~

7 Any of the following entities may receive a refund under this subsection:

- 8 (1) Repealed by Session Laws 2002-108, s. 13, effective January 1, 2003.
- 9 (2) A private, nonprofit organization that transports passengers under contract  
10 with or at the express designation of a unit of local government.
- 11 (3) A volunteer fire department.
- 12 (4) A volunteer rescue squad.
- 13 (5) A sheltered workshop recognized by the Department of Health and Human  
14 Services."

15 **SECTION 3.18.(a)** G.S. 105-449.121 reads as rewritten:

16 **"§ 105-449.121. Record-keeping requirements; inspection authority.**

17 (a) What Must Be Kept. – A person who is subject to audit under subsection (b) of this  
18 section must keep a record of all shipping documents or other documents used to determine  
19 information the person provides in a return or to determine the person's motor fuel transactions.  
20 The records must be kept for ~~three years from the due date of the return to which the records~~  
21 apply or, if the applicable period of statute of limitations as set forth in Article 9 of this Chapter.  
22 If the records apply to a transaction not required to be reported in a return, the records must be  
23 kept for three years from the date of the transaction.

24 (b) Inspection. – The Secretary or a person designated by the Secretary shall have the  
25 right at any reasonable time to inspect the records subject to audit under this subsection and  
26 may do any of the following to determine tax liability under this Article:

- 27 (1) Audit a person who is required to have or elects to have a license under this  
28 Article.
- 29 (2) Audit a distributor, a retailer, a bulk end-user, or a motor fuel user that is not  
30 licensed under this Article.
- 31 (3) Examine a tank or other equipment used to make, store, or transport motor  
32 fuel, diesel dyes, or diesel markers.
- 33 (4) Take a sample of a product from a vehicle, a tank, or another container in a  
34 quantity sufficient to determine the composition of the product.
- 35 (5) Stop a vehicle for the purpose of taking a sample of motor fuel from the  
36 vehicle."

37 **SECTION 3.18.(b)** This section is effective when this act becomes law and applies  
38 to documents required to be kept for transactions occurring on or after that date. The authority of  
39 the Secretary or the Secretary's designee to inspect records at any reasonable time is ongoing and  
40 is not limited to records for transactions occurring on or after the effective date of this section.

41 **SECTION 3.19.(a)** G.S. 105-449.139(a) reads as rewritten:

42 "(a) Records. – A licensee person required to be licensed under this Article must keep a  
43 record of all documents used to determine the information provided in a return filed under this  
44 Article. The records must be kept for three years from the due date of the return to which the  
45 records apply. applicable period of statute of limitations as set forth under Article 9 of this  
46 Chapter. If the records apply to a transaction not required to be reported in a return, the records  
47 must be kept for three years from the date of the transaction. The records are open to inspection  
48 during business hours by the Secretary or a person designated by the Secretary. Secretary or a  
49 person designated by the Secretary shall have the right at any reasonable time to inspect the  
50 records."

1           **SECTION 3.19.(b)** This section is effective when this act becomes law and applies  
2 to documents required to be kept for transactions occurring on or after that date. The authority of  
3 the Secretary or the Secretary's designee to inspect records at any reasonable time is ongoing and  
4 is not limited to records for transactions occurring on or after the effective date of this section.

5           **SECTION 3.20.(a)** G.S. 119-18 reads as rewritten:

6 "**§ 119-18. Inspection tax and distribution of the tax proceeds.**

7           (a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied  
8 upon all of the fuel listed in this subsection regardless of whether the fuel is exempt from the  
9 per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The  
10 inspection tax on motor fuel is due and payable to the Secretary of Revenue on the date the per  
11 gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the  
12 General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of  
13 Revenue on the date the excise tax on alternative fuel is due and payable under Article 36D of  
14 Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the  
15 Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General  
16 Statutes and by a kerosene supplier. A monthly report is due on the date a monthly return is due  
17 under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier  
18 licensed under that Part and to kerosene received during the preceding month by a kerosene  
19 supplier. A kerosene terminal operator must file a return in accordance with the provisions of  
20 G.S. 105-449.90. The inspection tax on jet fuel and aviation gasoline is payable as specified by  
21 the Secretary of Revenue. A return must be in the form prescribed by, and contain information  
22 required by, the Secretary.

- 23           (1) Motor fuel.  
24           (2) Alternative fuel used to operate a highway vehicle.  
25           (3) Kerosene.  
26           (4) Jet fuel.  
27           (5) Aviation gasoline.

28           ...

29           (d) Records. – A person required to remit the tax imposed by this section shall keep a  
30 record of all documents used to determine the information provided in a return. The records shall  
31 be kept for the applicable period of statute of limitations as set forth under Article 9 of Chapter  
32 105 of the General Statutes. The Secretary or a person designated by the Secretary shall have the  
33 right at any reasonable time to inspect the records."

34           **SECTION 3.20.(b)** This section is effective when this act becomes law and applies  
35 to documents required to be kept for transactions occurring on or after that date. The authority of  
36 the Secretary or the Secretary's designee to inspect records at any reasonable time is ongoing and  
37 is not limited to records for transactions occurring on or after the effective date of this section.

38           **SECTION 3.21.** G.S. 105-449.81 reads as rewritten:

39 "**§ 105-449.81. Excise tax on motor fuel.**

40 An excise tax at the motor fuel rate is imposed on motor fuel that is:

41           ...

- 42           (3b) Fuel grade ethanol or biodiesel fuel if the fuel meets at least one of the  
43 following descriptions:  
44           a. Is produced in this State and is removed from the storage facility at the  
45 production location.  
46           b. Is imported to this State by means of a transport truck, a railroad tank  
47 car, a tank wagon, or a marine vessel where fuel grade ethanol or  
48 biodiesel from the vessel is not delivered to a terminal that has been  
49 assigned a terminal control number by the Internal Revenue Service.  
50           c. Repealed by Session Laws 2009-445, s. 34(a), effective January 1,  
51 2010.

1           d.       Is removed from the terminal transfer system and is not subject to the  
2                       federal excise tax imposed by § 4081 of the Code.

3           (4)       Blended fuel made in this State or imported to this State.

4           (5)       Transferred within the terminal transfer system and is subject, upon transfer,  
5                       to the federal excise tax imposed by ~~section~~ § 4081 of the Code or is  
6                       transferred to a person at a terminal who is not licensed under this Article as  
7                       a supplier."

8           **SECTION 3.22.(a)** G.S. 105-449.88 reads as rewritten:

9   **"§ 105-449.88. Exemptions from the excise tax.**

10       The excise tax on motor fuel does not apply to the following:

11       ...

12       (12)      Fuel grade ethanol or biodiesel transferred between terminals within North  
13                       Carolina, if the fuel grade ethanol or biodiesel is owned by the same licensed  
14                       supplier."

15           **SECTION 3.22.(b)** This section is effective when it becomes law and applies to  
16   transfers occurring on or after that date.

17           **SECTION 3.23.** Except as otherwise provided, this Part is effective when it becomes  
18   law.

#### 19   **PART IV. PROPERTY TAX CHANGES**

20           **SECTION 4.1.** G.S. 105-277.9 is repealed.

21           **SECTION 4.2.** This Part is effective when it becomes law.

#### 22   **PART V. TAX ADMINISTRATION AND COLLECTIONS CHANGES**

23           **SECTION 5.1.(a)** G.S. 105-236 reads as rewritten:

24   **"§ 105-236. Penalties; situs of violations; penalty disposition.**

25       (a)       Penalties. – The following civil penalties and criminal offenses apply:

26           (1)       Penalty for Bad Checks. – When the bank upon which any uncertified check  
27                       tendered to the Department of Revenue in payment of any obligation due to  
28                       the Department returns the check because of insufficient funds or the  
29                       nonexistence of an account of the drawer, the Secretary shall assess the drawer  
30                       of the check a penalty equal to ten percent (10%) of the check, subject to a  
31                       minimum of one dollar (\$1.00) and a maximum of one thousand dollars  
32                       (\$1,000). This penalty does not apply if the Secretary finds that, when the  
33                       check was presented for payment, the drawer of the check had sufficient funds  
34                       in an account at a financial institution to pay the check and, by inadvertence,  
35                       the drawer of the check failed to draw the check on the account that had  
36                       sufficient funds. For purposes of this subdivision, in the case of a garnishment  
37                       payment, the term "drawer" refers to the garnishee.

38           (1a)      Penalty for Bad Electronic Funds Transfer. – When an electronic funds  
39                       transfer cannot be completed due to insufficient funds or the nonexistence of  
40                       an account of the transferor, the Secretary shall assess the transferor a penalty  
41                       equal to ten percent (10%) of the amount of the transfer, subject to a minimum  
42                       of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). ~~This~~  
43                       ~~penalty may be waived by the Secretary in accordance with G.S. 105-237.~~ For  
44                       purposes of this subdivision, in the case of a garnishment payment, the term  
45                       "transferor" refers to the garnishee."

46           **SECTION 5.1.(b)** G.S. 105-242.1(b) reads as rewritten:

47       (b)       Action. – A garnishee must comply with a notice of garnishment or file a written  
48       response to the notice within the time set in this subsection. A garnishee that is a financial  
49       institution must comply or file a response within 20 days after receiving a notice of garnishment.  
50  
51



1 All other garnishees must comply or file a response within 30 days after receiving a notice of  
2 garnishment. A written response must explain why the garnishee is not subject to garnishment  
3 and attachment.

4 Upon receipt of a written response, the Department must contact the garnishee and schedule  
5 a conference to discuss the response or inform the garnishee of the Department's position  
6 concerning the response. If the Department does not agree with the garnishee on the garnishee's  
7 liability, the Department may proceed to enforce the garnishee's liability for the tax by sending  
8 the garnishee a notice of proposed assessment in accordance with ~~G.S.~~  
9 ~~105-241.9.~~G.S. 105-241.9, including any penalties imposed in this Article. If the garnishee does  
10 not file a response to the notice of garnishment within the time set in this subsection and fails to  
11 comply with the notice, the garnishee is subject to the penalties imposed in this Article."

12 **SECTION 5.2.** G.S. 105-241.11(a) reads as rewritten:

13 "(a) Procedure. – A taxpayer who objects to a proposed denial of a refund or a proposed  
14 assessment of tax may request a Departmental review of the proposed action by filing a request  
15 for review. The request for review must either be in on the form prescribed by the Secretary or  
16 be a written statement clearly indicating the taxpayer requests review of a proposed denial of a  
17 refund or a proposed assessment of tax and include an explanation for the request for review. The  
18 request must be filed with the Department as follows:

19 ...."

20 **SECTION 5.3.(a)** Article 9 of Chapter 105 of the General Statutes is amended by  
21 adding the following new section to read:

22 **"§ 105-241.24. Statute of limitations on collections.**

23 The Department may collect a tax for a period of 10 years from the date it becomes collectible  
24 under G.S. 105-241.22. The 10-year period may be tolled for the same reasons the enforcement  
25 period for a certificate of tax liability may be tolled under G.S. 105-242(c). If the tax is not  
26 collected within the time frame authorized under this section, the remaining liability is abated."

27 **SECTION 5.3.(b)** G.S. 105-242(c) reads as rewritten:

28 "(c) Certificate of Tax Liability. – The Department may file a certificate of tax liability to  
29 collect a tax that is owed by a taxpayer and is collectible under G.S. 105-241.22. A certificate of  
30 tax liability must state the taxpayer's name and the type and amount of tax owed. If the taxpayer  
31 resides in this State or has property in this State, the Department must file the certificate of tax  
32 liability with the clerk of the superior court of a county in which the taxpayer resides or has  
33 property. If the taxpayer does not reside in this State or have property in this State, the Department  
34 must file the certificate of tax liability in Wake County.

35 The clerk of court must record a certificate of tax liability in the same manner as a judgment.  
36 A recorded certificate of tax liability is considered a judgment and is enforceable in the same  
37 manner as other judgments. The legal rate of interest set in G.S. 24-1 applies to the principal  
38 amount of tax stated on the certificate of tax liability. The tax stated on a certificate of tax liability  
39 is a lien on real and personal property from the date the certificate is recorded.

40 A certificate of tax liability is enforceable for a period of 10 years from the date it is ~~recorded.~~  
41 recorded, however, the enforcement period may not extend beyond the statute of limitations  
42 provided for under G.S. 105-241.24. If the certificate is not satisfied within this period, the  
43 remaining liability of the taxpayer is abated and the Department must cancel the certificate. An  
44 execution sale initiated before the end of the 10-year-enforcement period may be completed after  
45 the end of this period, regardless of whether resales are required because of the posting of  
46 increased bids. The Secretary may accept tax payments made after a certificate has expired,  
47 regardless of whether any collection actions were taken before the certificate expired. A taxpayer  
48 may waive the 10-year-enforcement period for enforcement of the certificate for either a definite  
49 or an indefinite time.

50 The ~~10-year-enforcement period in which of~~ a certificate of tax liability is ~~enforceable~~ is  
51 tolled during the following periods:

- 1           (1) While the taxpayer is absent from the State. The period ~~is~~may be tolled during
- 2           the taxpayer's absence plus one year after the taxpayer returns.
- 3           (2) Upon the death of the taxpayer. The period is tolled while the taxpayer's estate
- 4           is administered plus one year after the estate is closed.
- 5           (3) While an action is pending to set aside a conveyance made by the taxpayer as
- 6           a fraudulent conveyance.
- 7           (4) While an insolvency proceeding against the taxpayer is pending.
- 8           (5) During the period of any statutory or judicial bar to the enforcement of the
- 9           certificate.
- 10          (6) The period for which a taxpayer has waived the ~~10-year~~enforcement period."
- 11

12 **PART VI. EFFECTIVE DATE**

13           **SECTION 6.** Except as otherwise provided, this act is effective when it becomes  
14 law.