

NORTH CAROLINA GENERAL ASSEMBLY



REVENUE LAWS STUDY COMMITTEE

**REPORT TO THE
2019 SESSION
of the
2020 GENERAL ASSEMBLY
OF NORTH CAROLINA**

MAY 13, 2020

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LETTER OF TRANSMITTAL

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REVENUE LAWS STUDY COMMITTEE
State Legislative Building
Raleigh, North Carolina 27603

Representative Julia C. Howard, Co-Chair

Senator Paul Newton, Co-Chair

May 13, 2020

TO THE MEMBERS OF THE 2019 REGULAR SESSION
OF THE 2020 GENERAL ASSEMBLY

The REVENUE LAWS STUDY COMMITTEE, respectfully submits the following report to the 2019 Regular Session of the 2020 General Assembly.

Rep. Julia C. Howard (Co-Chair)

Sen. Paul Newton (Co-Chair)

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COMMITTEE MEMBERSHIP

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2019-2020

President Pro Tempore of the Senate
Appointments:

Sen. Paul Newton (Co-Chair)

Sen. Ralph Hise (Vice-Chair)
Sen. Jerry W. Tillman (Vice-Chair)
Sen. Harry Brown
Sen. Ben Clark
Sen. Chuck Edwards
Sen. Milton F. "Toby" Fitch, Jr.
Sen. Kathy Harrington
Sen. Bill Rabon
Sen. Terry Van Duyn

Committee Assistants:

Cameron Dawson

Research Division:

Cindy Avrette, Staff Attorney
Nicholas Giddings, Staff Attorney
Trina Griffin, Staff Attorney
Greg Roney, Staff Attorney
Melissa Zbikowski, Research Assistant

Speaker of the House of Representatives
Appointments:

Rep. Julia C. Howard (Co-Chair)

Rep. Stephen M. Ross (Vice-Chair)
Rep. Kelly M. Alexander, Jr.
Rep. Dana Bumgardner
Rep. Becky Carney
Rep. Chris Humphrey
Rep. Robert T. Reives, II
Rep. Mitchell S. Setzer
Rep. John Szoka
Rep. Harry Warren
Rep. John Hardister (Advisory Member)
Rep. Kelly E. Hastings (Advisory Member)
Rep. Keith Kidwell (Advisory Member)
Rep. David R. Lewis (Advisory Member)

Bill Drafting Division:

Dan Ettafagh, Staff Attorney

Fiscal Research Division:

Rodney Bizzell, Fiscal Analyst
Barry Boardman, PhD, Economist
Denise Canada, Fiscal Analyst
Jonathan Tart, Fiscal Analyst

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COMMITTEE PROCEEDINGS

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The Revenue Laws Study Committee is established in Article 12L of Chapter 120 of the General Statutes to serve as a permanent legislative commission to review issues relating to taxation and finance. Before it was created as a permanent legislative commission in 1997, the Revenue Laws Study Committee was a subcommittee of the Legislative Research Commission. It has studied the revenue laws every year since 1977. The Committee consists of 20 members, 10 appointed by the President Pro Tempore of the Senate and 10 appointed by the Speaker of the House of Representatives.¹ Committee members may be legislators or citizens. The Co-Chairs for 2019-2020 are Representative Julia Howard and Senator Paul Newton.

In its study of the revenue laws, G.S. 120-70.106 gives the Committee a very broad scope, stating that the Committee "may review the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, easy to administer, and equitable." A copy of Article 12L of Chapter 120 of the General Statutes is included in Appendix A.² A committee notebook containing the Committee minutes and all information presented to the Committee is filed in the Legislative Library and may also be accessed online at the Committee's website: <http://www.ncleg.net/DocumentSites/committees/revenuelaws/Homepage/index.html>.

¹ The Speaker of the House of Representatives appointed a ninth, non-voting advisory member in 2007. In S.L. 2009-574, the General Assembly expanded the legislative membership of the Committee from 16 members to 20 members. In 2009, the Speaker appointed a twelfth non-voting advisory member. In 2013, the Speaker appointed five non-voting advisory members and the Senate appointed two.

² The General Assembly established a permanent subcommittee under the Revenue Laws Study Committee to study and examine the property tax system in S.L. 2002-184, s. 8. However, subcommittee members were not appointed and the subcommittee did not function from 2004 through 2010. In S.L. 2011-266, s.1.15, the General Assembly repealed the subcommittee. The full Committee continues to review the property tax system and recommend changes to it.

The Revenue Laws Study Committee met four times after the adjournment of the 2019 Regular Session of the 2020 General Assembly on January 14, 2020. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library. Appendix D contains a copy of the Committee's agenda for each meeting. The materials distributed at the meetings may be viewed on the Committee's website: <http://www.ncleg.net/committees/>. The Committee received numerous requests from legislators, taxpayers, the Department of Revenue, and interest groups to study various issues of tax policy and tax administration. The Committee considered many issues but was unable to take up all the issues suggested to it. The Committee considered all proposed tax changes in light of general principles of tax policy and as part of an examination of the existing tax structure as a whole.

2019 FINANCE CHANGES

During the Committee's meeting on January 29, 2020, the Revenue Laws Committee heard an overview of the State and local revenue sources from Emma Turner, Fiscal Research Division, and a presentation from Nick Giddings, Legislative Analysis Division, covering the tax changes made during the 2019 Session of the North Carolina General Assembly. [State and Local Revenue Overview](#). [Revenue Laws 2019 Finance Changes Presentation](#).

IRC UPDATE

North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the Code.³ The General Assembly determines each year whether to

³ North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

(footnote continued)

update its reference to the Code.⁴ Updating the reference makes recent amendments to the Code applicable to the State to the extent that State law previously tracked federal law. Maintaining conformity with federal tax law simplifies tax reporting because a taxpayer will not need to account for differing federal and State treatment of the same asset.

Congress enacted Public Law 116-94 on December 20, 2019. The Committee reviewed the tax changes made by that legislation at its meeting on February 12, 2020 and recommended at the March 11, 2020 meeting to conform to the changes made to the medical expense deduction and to decouple from three other "extenders".

Congress enacted Public Law 116-136 on March 27, 2020. The Committee reviewed the tax changes made by that legislation at its meeting on May 13, 2020 and recommended that the State decouple from these changes at this time. Part I of Legislative Proposal #1 contains the Committee's IRC Update recommendations.

VARIOUS SALES TAX CHANGES

Clarification of Taxability of Certain Digital Property

During the Committee's meeting on February 12, 2020, Trina Griffin of the Legislative Analysis Division, presented to the Committee an update on digital property tax and online learning: [Digital Property Tax and Online Learning Presentation](#).

⁴ The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

In 2017, 15% of college students were enrolled in completely online courses. North Carolina is a member of the streamline tax agreement called the Streamlined Sales and Use Tax Agreement (SST). The SST arose out of issues created by the difficulty of imposing state and local taxes on digital purchases of products and services made across state lines, particularly when the business involved in the transaction does not have a physical presence in the state where the purchase was made. Member states are not required to tax digital products, nor do member states have to align their tax policies with everything in the agreement. States do not have to tax all of the digital products that other states choose to tax and they can also tax additional items that are not taxed in other states. States cannot impose a tax on an online version of a service if the equivalent of the offline version is not taxed per federal legislation. North Carolina made a change to this taxation last year. The General Assembly passed a bill that made it clear that there does not have to be an actual, tangible version of the digital product.

The UNC system raised questions about the impact it would have over how their online courses would be taxed since they would be considered audio/visual digital taxable products. Members were asked to think about how they would want to define the courses, what other conditions should be added to those courses, and how broad to make to law to avoid violating federal law.

Legislative Proposal #2 would do the following:

- Allow nonprofit and governmental entities to apply for a State and local sales tax refund for sales tax paid on certain digital property, to the same extent as allowed for local school administrative units.
- Clarify that the economic nexus threshold applies only to remote marketplace facilitators. Marketplace facilitators that have a physical presence in North Carolina are required to collect and remit sales tax on the first dollar of sales sourced to this State.

- Clarify that a digital code is taxed in the same manner as the certain digital property for which the digital code relates.
- Require marketplace facilitators who transact retail sales of prepared food and beverage to collect and remit local meals tax to the taxing city or county and codifies into the General Statutes the existing definition of "prepared food and beverages" used by the five localities with a meals tax.

Auctioneers and Estate Sales

On March 11, 2020, the Committee heard a presentation from Trina Griffin, Legislative Analysis Division, covering sales and use tax changes for auctioneers and estate sale companies. Currently, auctioneers who buy or acquire tangible personal property by consignment or otherwise that they sell at retail must register with the Department of Revenue and collect and remit sales tax on the sales. This longstanding principle has remained unchanged for many years, but the passage of the marketplace facilitator provision has resulted in a re-examination of some aspects of this industry.

Legislative Proposal #2 would do the following:

- Expand on the sales tax exemption with respect to the purchase of certain animals by qualifying farmers to include livestock. "Livestock" is defined to mean cattle, sheep, goats, swine, horses, and mules. The current exemption applies only to baby chicks and poults.
- Authorize the Secretary of Revenue of compromise the liability of an auctioneer with respect to the sale of livestock at auction for which the auctioneer failed to collect sales tax if the taxpayer can demonstrate a good faith effort to comply with the tax laws, which would include being registered as a retailer by July 1, 2020. This ability to compromise liability

would apply only to tax due for a reporting period ending prior to July 1, 2020. This provision recognizes that there may have been some confusion or lack of clarity in the auctioneer industry with respect to sales tax collection obligations and gives the Secretary flexibility in the event an auctioneer is assessed for failure to collect. However, by no later than April 1, 2020, all auctioneers will have been notified by the Department, through both email and regular mail, as to their registration and collection obligations.

- Provide a five-month grace period to businesses that conduct tag sales or estate sales at either a person's home or farm without risk of assessment by the Department for failure to collect tax. The intent is to afford these businesses who previously did not have to collect tax with additional time to come into compliance with the marketplace facilitator provision that became effective February 1, 2020

Large Fulfillment Facilities

On March 11, 2020, Ms. Griffin's presentation also covered the law relating to fulfillment centers. In 2017, the General Assembly enacted a sales and use tax exemption for certain equipment purchased by a "large fulfillment facility." A large fulfillment facility is a facility used primarily for receiving, inventorying, sorting, repackaging, and distributing finished retail products for the purpose of fulfilling customer orders. To qualify, the facility must invest at least \$100 million in real and tangible personal property within five years of the first property investment, as certified by the Department of Commerce, and must maintain an employment level of 400 people. There is a forfeiture provision in the event the employment level at the facility drops below 400.

Legislative Proposal #2 would expand the sales tax exemption for equipment, accessories, attachments, and repair parts purchased by a large fulfillment facility to include the following:

- When these items are purchased by a contractor or subcontractor if the purchase is for use in the performance of a contract with the facility.
- Equipment used for baling previously used packaging for resale, sanitizing as required by federal law, and material handling.

The Proposal also provides a limited refund provision in the event a large fulfillment facility makes purchases of this equipment prior to July 1, 2020, when the exemption would become effective.

LOCAL OPTION SALES TAX (LOST)

Modernizing the LOST Distribution

During the Committee's meeting on January 29, 2020, Denise Canada, Fiscal Research Division, presented an overview of the State sales tax laws, and how the LOST piggybacks the State sales tax and how LOST is distributed among the counties and cities. [Overview of State and Local Sales and Use Tax](#). During the Committee's meeting on February 12, 2020, Denise Canada, Fiscal Research Division, and Ernest Irving, North Carolina Department of Revenue, presented on distribution of LOST and possible steps for modernizing the distribution formula. They stated up front that the options presented were just a few of countless possibilities and that the presentation did not serve as an endorsement of any given option. [Modernizing the State's Local Sales Tax Distribution](#).

The current formula uses two main elements as the basis for distribution – point-of-sale and per capita. Urban counties and high-tourism counties often prefer the point-of-sale method, which distributes the revenue collected in a manner proportionate to where

the purchases were made. The per capita method distributes the sales tax revenue collected based on the number of residents in the county, a method preferred among more rural counties. Over time, the General Assembly has layered new policy decisions on top of older ones, resulting in many "redistributions" stacked together.

The presentation shared formulaic changes that could simplify the distribution, modernize it to use current data, and be more transparent. It suggested that many of the existing redistributions could be eliminated if the formula added two additional elements: one based upon property tax data and one based upon an equity factor allocation which would allocate a small percentage of the total local sales tax revenue to every city and county based on the county's population. The updated formula that staff presented would consist of allocating 60% on a point-of-sale basis, 30% on a per capita basis, 7% on an ad valorem basis, and 3% on an equity basis. While there would be some losses and some gains at the individual county level, the change would be minimal. All individual county losses would be within 5%, and all individual county gains would be within 10% of the current allocation they receive.

Members engaged in a discussion regarding *ad valorem* rates and whether steps should be taken to modernize the formula. Ernest Irving agreed to provide figures of yearly estimates to the Committee. During the Committee's meeting on March 11, 2020, Ernest Irving, North Carolina Department of Revenue, and Denise Canada, Fiscal Research Division, provided a follow up handout with the [Yearly Estimates of Local Sales Tax Distributions to the Counties, with Options for Modernization](#) and were available for follow up questions. The Committee did not choose to make any recommendations for adjusting the LOST distribution formula to the 2020 Session but did express a desire to continue its study.

LOST Flexibility

The Committee heard a presentation from Trina Griffin, Legislative Analysis Division, on flexibility for LOST. Counties are seeking additional revenue for various projects, such as school construction and renovations, infrastructure upgrades, road construction and street improvements, dredging and beach nourishment, and economic development. However, most counties are not levying their maximum LOST authority. Counties have authority to levy a 2% LOST, under Articles 39, 40, and 42 collectively. All counties levy this 2% and share it with their municipalities. Counties have authority to levy an additional $\frac{1}{4}$ -cent or $\frac{1}{2}$ -cent LOST under Article 43, but only for public transit purposes. Most counties do not have public transit needs large enough to justify this levy. Counties may also levy an additional $\frac{1}{4}$ -cent under Article 46 for any public purpose with a referendum. Forty-two counties have enacted this LOST, but 34 counties have had failed attempts to enact the unrestricted tax and 24 counties have never attempted to enact the unrestricted tax.

The Committee did not choose to make any recommendations to LOST flexibility for the 2020 Session. It noted that if the goal is to enable counties to more aptly use this additional sales tax authority, then one proposal would be to make the following adjustments:

- **SHIFT OR UNRESTRICT UNUSED TAXING AUTHORITY.** Article 43 of Chapter 105 authorizes a local sales and use tax for financing public transportation systems. Rate of tax varies based on county: $\frac{1}{2}\%$ - Durham, Forsyth, Guilford, Mecklenburg, Orange, and Wake. These counties may only levy $\frac{1}{2}$ -cent for this purpose; no option to levy $\frac{1}{4}$ -cent. Counties currently levying are Durham, Mecklenburg, Orange, and Wake. $\frac{1}{4}\%$ - All other counties (94) with no counties levying. In recent years, there have been legislative attempts to create an alternative “restricted use” local sales tax for public education, shift unused taxing authority under Art. 43 to Art.

46, which would provide additional general purpose revenue, and provide a combination of both, with a maximum rate limitation.

- SPECIFY BALLOT QUESTION. Article 46 authorizes levy of ¼-cent local sales and use tax if approved in a referendum; 42 counties levy this tax. The ballot question is set in statute and cannot be modified without legislation. Current question does not specify purpose and, therefore, tax proceeds may be used for any public purpose. In recent years, there have been legislative attempts to provide specified purpose in ballot question, including public education/school construction, infrastructure upgrades/maintenance, beach nourishment/dredging, road construction/street improvements, economic development, and public safety.

TAX AND FINANCE PROVISIONS WITH SUNSETS

On March 11, 2020, the Revenue Laws Committee heard a presentation from Cindy Avrette, Legislative Analysis Division, regarding the sunsets on tax and finance provisions. [Tax and Finance Provisions with Sunsets](#). The provisions covered by this review included the following:

1. G.S. 105-237.1(a)(6): Compromise of Liability, sunset date: July 1, 2020
2. G.S. 105-275(7a): Property Classified and Excluded from the Tax Base, sunset date: July 1, 2021
3. G.S. 105-277.9A: Reduced Assessment for Improved Property in Certain Roadway Corridors, sunset date: July 1, 2021
4. G.S. 105-269.8: Contribution of tax refund to the Cancer Prevention and Control Branch of the Division of Public Health, sunset date: January 1, 2021

5. G.S. 160A-239.1: Special Assessment District (SAD) Revenue Bond authority, sunset date: July 1, 2020
6. G.S. 153A-210.1: Special Assessment District (SAD) Revenue Bond authority, sunset date: July 1, 2025
7. G.S. 153A-210.1(a1): Special Assessment District (SAD) Revenue Bond authority, sunset date: July 1, 2022

The Committee agreed that the first three sunset provisions had served their intended purpose and did not need to be extended. The Committee agreed to extend the ability of taxpayers to donate all or a portion of their tax refund to the Cancer Prevention and Control Branch of the Division of Public Health. The sunset extension is contained in Legislative Proposal #1.

The Committee raised questions about the special assessment district revenue bond authority and the differing sunset dates between the county's authority and the municipal authority. Sam Watts, North Carolina Department of State Treasurer, explained the bonding authority and the high interest rates and administrative costs usually associated with it. He noted there have been two cities that have used the authority, Morrisville and Hillsborough, and that no new deals were pending. The members asked if the municipalities had any comments or concerns. Erin Wynia, Chief Legislative Counsel, North Carolina League of Municipalities, responded that this bonding authority is uniquely made for large projects. She acknowledged that it has not widely used and expressed her concern that the sunset might prevent municipalities from using this authority in situations where it may prove useful. The League would like the municipal 2025 sunset to remain. The Committee decided to extend the county sunset to the same date as currently exist for the municipal authority, July 1, 2025. The extension of this sunset date is incorporated into Legislative Proposal #1.

REVENUE LAWS TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES

The Revenue Laws Study Committee is charged with reviewing the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, easy to administer, and equitable. The Department of Revenue submitted a list of tax law changes for the Committee to consider. The Legislative Proposal consists of many of the recommendations submitted to the Committee by the Department. The Committee reviewed a proposal at its February meeting, and another proposal at its March meeting. The Committee posted both proposals on its website and invited interested parties to review them and to contact the Committee's staff with any questions, concerns, or suggestions. The two proposals were combined, along with the IRC Update bill draft and the tax sunset extensions, into Legislative Proposal #1.

KAESTNER OVERVIEW

The Committee heard an educational presentation from Greg Roney, Legislative Analysis Division, on the recent US Supreme Court case of NCDOR v. [Kaestner](#). [Overview of US Supreme Court Decision in Kaestner Presentation](#). The US Supreme Court held that a trust lacked sufficient connection for the State to tax the trust's income where the beneficiary lived in the State but the trustee, records, and investments were located outside of the State. The US Supreme Court focused on three factors: (1) the beneficiary received no trust income, (2) the beneficiary had no right to demand trust income, and (3) the beneficiary was uncertain to ever receive a specific share of trust income. The US Supreme Court did not define what connection, in addition to the presence of a beneficiary, would allow a state to tax the income of a trust. Income from property with a physical presence

in a state, such as land and tangible personal property, is subject to tax by the state where the property is physically located. After the Kaestner decision, State law remains valid because the decision held State law unconstitutional "as applied" to the facts in the case. The NC Department of Revenue is processing refund claims where trusts claim that the Kaestner analysis applies and the State lacks sufficient connections to tax the trust's income.

FINDINGS AND RECOMMENDATIONS

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The Revenue Laws Study Committee makes the following recommendations to the 2020 General Assembly. The proposal is followed by an explanation and, if it has a fiscal impact, a fiscal memorandum, indicating any anticipated revenue gain or loss resulting from the proposal.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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BILL DRAFT 2019-BAxfz-22A [v.3]

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/12/2020 5:01:44 PM

Short Title: Revenue Laws Recommendations.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE REVENUE LAWS.
3 The General Assembly of North Carolina enacts:

4
5 **PART I. IRC UPDATE**

6 **SECTION 1.(a)** G.S. 105-228.90(b)(1b) reads as rewritten:

7 "(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2019~~, May 1, 2020,
8 including any provisions enacted as of that date that become effective either before or after that
9 date."

10 **SECTION 1.(b)** G.S. 105-130.5(a) reads as rewritten:

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

13 ...

14 (31) For taxable years 2019 and 2020, a taxpayer must add an amount equal to the
15 amount by which the taxpayer's interest expense deduction under section
16 163(j) of the Code exceeds the interest expense deduction that would have
17 been allowed under the Code as enacted as of January 1, 2020, as calculated
18 on a separate entity basis. The purpose of this subdivision is to decouple from
19 the modification of limitation on business interest allowed under section 2306
20 of the CARES Act.

21 (32) A taxpayer must add the amount of any forgiveness of indebtedness on a
22 covered loan. The term "covered loan" has the same meaning as defined in
23 section 1106 of the CARES Act. The purpose of this subdivision is to
24 decouple from the loan forgiveness allowed under section 1106 of the CARES
25 Act.

26 **SECTION 1.(c)** G.S. 105-153.5(a)(2)a. reads as rewritten:

27 "a. Charitable Contribution. – The amount allowed as a deduction for charitable
28 contributions under section 170 of the Code for that taxable year. For taxable years 2014 through
29 2018, a taxpayer who elected to take the income exclusion under section 408(d)(8) of the Code
30 for a qualified charitable distribution from an individual retirement plan by a person who has
31 attained the age of 70 1/2 may deduct the amount that would have been allowed as a charitable
32 deduction under section 170 of the Code had the taxpayer not elected to take the income
33 exclusion. For taxable year 2020, notwithstanding G.S. 105-228.90(b)(1b), the term "Code" is
34 the Internal Revenue Code as enacted as of January 1, 2020. For taxable years beginning on or



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1 after January 1, 2021, a taxpayer may only carry forward the charitable contributions from
2 taxable year 2020 that exceed the applicable percentage limitation for the 2020 taxable year
3 allowed under this sub-subdivision. The purpose for defining the Code differently for the 2020
4 taxable year is to decouple from the modification of limitations on charitable contributions during
5 2020 allowed under section 2205 of the CARES Act."

6 **SECTION 1.(d)** G.S. 105-153.5(a)(2)b. reads as rewritten:

7 "b. Mortgage Expense and Property Tax. – The amount allowed as a deduction for
8 interest paid or accrued during the taxable year under section 163(h) of the Code with respect to
9 any qualified residence plus the amount allowed as a deduction for property taxes paid or accrued
10 on real estate under section 164 of the Code for that taxable year. For taxable years ~~2014, 2015,~~
11 ~~2016, and 2017,~~ 2014 through 2020, the amount allowed as a deduction for interest paid or
12 accrued during the taxable year under section 163(h) of the Code with respect to any qualified
13 residence shall not include the amount for mortgage insurance premiums treated as qualified
14 residence interest. The amount allowed under this sub-subdivision may not exceed twenty
15 thousand dollars (\$20,000). For spouses filing as married filing separately or married filing
16 jointly, the total mortgage interest and real estate taxes claimed by both spouses combined may
17 not exceed twenty thousand dollars (\$20,000). For spouses filing as married filing separately
18 with a joint obligation for mortgage interest and real estate taxes, the deduction for these items
19 is allowable to the spouse who actually paid them. If the amount of the mortgage interest and real
20 estate taxes paid by both spouses exceeds twenty thousand dollars (\$20,000), these deductions
21 must be prorated based on the percentage paid by each spouse. For joint obligations paid from
22 joint accounts, the proration is based on the income reported by each spouse for that taxable
23 year."

24 **SECTION 1.(e)** G.S. 105-153.5(c2) read as rewritten:

25 "(c2) Decoupling Adjustments. – In calculating North Carolina taxable income, a taxpayer
26 must make the following adjustments to the taxpayer's adjusted gross income:

27 (1) For taxable years ~~2014, 2015, 2016, and 2017,~~ 2014 through 2020, the
28 taxpayer must add the amount excluded from the taxpayer's gross income for
29 the discharge of qualified principal residence indebtedness under section 108
30 of the Code. The purpose of this subdivision is to decouple from the income
31 exclusion available under federal tax law. If the taxpayer is insolvent, as
32 defined in section 108(d)(3) of the Code, then the addition required under this
33 subdivision is limited to the amount of discharge of qualified principal
34 residence indebtedness excluded from adjusted gross income under section
35 108(a)(1)(E) of the Code that exceeds the amount of discharge of indebtedness
36 that would have been excluded under section 108(a)(1)(B) of the Code.

37 (2) For taxable year ~~2014, 2015, 2016, and 2017,~~ 2014 through 2020, the taxpayer
38 must add the amount of the taxpayer's deduction for qualified tuition and
39 related expenses under section 222 of the Code. The purpose of this
40 subdivision is to decouple from the above-the-line deduction available under
41 federal tax law.

42 ...

43 (8) For taxable years 2013, 2014, 2015, 2016, or 2017, the taxpayer must add the
44 amount of any 2018 net operating loss deducted and absorbed on a federal
45 return under section 172 of the Code. The purpose of the adjustments made
46 under this subdivision is to decouple from the net operating loss carryback
47 provisions of section 2303 of the CARES Act. The addition under this
48 subsection is not required to the extent the 2018 net operating loss is carried
49 back under the provisions of section 172(b)(1)(B) of the Code.

50 (9) For taxable years 2014, 2015, 2016, 2017, or 2018, the taxpayer must add the
51 amount of any 2019 net operating loss deducted and absorbed on a federal

1 return under section 172 of the Code. The purpose of the adjustments made
2 under this subdivision is to decouple from the net operating loss carryback
3 provisions of section 2303 of the CARES Act. The addition under this
4 subsection is not required to the extent the 2019 net operating loss is carried
5 back under the provisions of section 172(b)(1)(B) of the Code.

6 (10) For taxable years 2015, 2016, 2017, 2018, or 2019, the taxpayer must add the
7 amount of any 2020 net operating loss deducted and absorbed on a federal
8 return under section 172 of the Code. The purpose of the adjustments made
9 under this subdivision is to decouple from the net operating loss carryback
10 provisions of section 2303 of the CARES Act. The addition under this
11 subdivision is not required to the extent the 2020 net operating loss is carried
12 back under the provisions of section 172(b)(1)(B) of the Code.

13 (11) For taxable years 2018, 2019, and 2020, the taxpayer must add an amount
14 equal to the taxpayer's excess business loss, as defined under the provisions
15 of section 461(l) of the Code as enacted as of January 1, 2019. The addition
16 under this subdivision is not required to the extent the loss is added under
17 subdivision (8), (9), or (10) of this subsection.

18 (12) The taxpayer must add the amount by which the taxpayer's net operating loss
19 carryforward deduction exceeds the amount allowed under the provisions of
20 section 172(a)(2)(B) of the Code as enacted as of January 1, 2019. This
21 add-back only applies to net operating losses arising during taxable years
22 2018, 2019, and 2020.

23 (13) For taxable years 2021 through 2025, a taxpayer who made an addition under
24 subdivision (8), (9), or (10) of this subsection may deduct twenty percent
25 (20%) per tax year of the sum of the amount added under subdivisions (8),
26 (9), and (10) of this subsection.

27 (14) A taxpayer who made an addition under subdivision (11) of this subsection
28 may deduct twenty percent (20%) of the addition in each of the taxable years
29 2021 through 2025.

30 (15) A taxpayer who made an addition under subdivision (12) of this subsection
31 may deduct twenty percent (20%) of the add-back in each of the taxable years
32 2021 through 2025.

33 (16) For taxable years 2019 and 2020, a taxpayer must add an amount equal to the
34 amount by which the taxpayer's interest expense deduction under section
35 163(j) of the Code exceeds the interest expense deduction that would have
36 been allowed under the Code as enacted as of January 1, 2020. The purpose
37 of this subdivision is to decouple from the modification of limitation on
38 business interest allowed under section 2306 of the CARES Act.

39 (17) For taxable year 2020, a taxpayer must add the amount excluded from the
40 taxpayer's gross income for payment by an employer, whether paid to the
41 taxpayer or to a lender, of principal or interest on any qualified education loan,
42 as defined in section 221(d)(1) of the Code, incurred by the taxpayer for
43 education of the taxpayer. The purpose of this subdivision is to decouple from
44 the exclusion for certain employer payments of student loans under section
45 2206 of the CARES Act.

46 (18) For taxable year 2020, a taxpayer must add the amount excluded from the
47 taxpayer's gross income under section 62(a)(22) of the Code. The purpose of
48 this subdivision is to decouple from the allowance of a partial above-the-line
49 deduction of qualified charitable contributions under section 2204 of the
50 CARES Act.

1 (19) A taxpayer must add the amount of any forgiveness of indebtedness on a
2 covered loan. The term "covered loan" has the same meaning as defined in
3 section 1106 of the CARES Act. The purpose of this subdivision is to
4 decouple from the loan forgiveness allowed under section 1106 of the CARES
5 Act."
6

7 **PART II. EXCISE TAX CHANGES**

8 **SECTION 2.1.** G.S. 105-113.4(10) reads as rewritten:

9 "(10) Sale. – ~~A transfer,~~ transfer of possession, transfer of ownership, a trade, an exchange,
10 or a barter, in any manner or by any means, with or without consideration."

11 **SECTION 2.2.(a)** G.S. 105-113.4A reads as rewritten:

12 **"§ 105-113.4A. Licenses.**

13 (a) General. – To obtain or renew a license required by this Article, an applicant must
14 file an application with the Secretary on a form provided by the Secretary and pay the tax due for
15 the license. An application must include the applicant's name, address, federal employer
16 identification number, and any other information required by the Secretary. A license is not
17 transferable or assignable and must be displayed in a conspicuous place at the each place of
18 business for which it is issued.

19 ...

20 (h) Lists. – The Secretary must ~~provide~~ make available the list required under subdivision
21 (3) of subsection (g) of this section upon request of a manufacturer that is a licensee under this
22 Article. The list must state the name, account number, and business address of each licensee on
23 the list."

24 **SECTION 2.2.(b)** G.S. 105-259(b)(50) reads as rewritten:

25 "(50) To ~~provide public access to~~ make available a list containing the name, physical
26 address, and account number of entities licensed under Article 2A of this Chapter to ~~aid in the~~
27 ~~administration of the tobacco products tax~~ all entities licensed under Article 2A of this Chapter."

28 **SECTION 2.2.(c)** G.S. 105-449.77(b) reads as rewritten:

29 "(b) Lists. – The Secretary must ~~annually give~~ make available to each licensee a list to
30 ~~each licensee~~ of all the licensees under this Article. The list must state the name, account number,
31 and business address of each licensee on the list. The Secretary must ~~send a monthly update of~~
32 ~~the list to each licensed refiner or licensed supplier and to any other licensee that requests a copy~~
33 ~~of the list monthly."~~

34 **SECTION 2.2.(d)** G.S. 105-449.139(c) reads as rewritten:

35 "(c) Lists. – The Secretary must ~~give~~ make available a list of licensed alternative fuel
36 providers to each licensed bulk end-user and licensed retailer. The Secretary must also ~~give~~ make
37 available a list of licensed bulk end-users and licensed retailers to each licensed alternative fuel
38 provider. A list must state the name, account number, and business address of each licensee on
39 the list. The Secretary must ~~send an annual update of a list~~ the lists required under this section to
40 ~~each licensee, as appropriate, annually."~~

41 **SECTION 2.3.(a)** G.S. 105-113.4B reads as rewritten:

42 **"§ 105-113.4B. Cancellation or revocation of license.**

43 (a) ~~Reasons-Cancellation.~~ – The Secretary may cancel a license issued under this Article
44 upon the written request of the ~~licensee~~ licensee. The licensee's request must include a proposed
45 effective date of cancellation. The licensee must and the immediate return of the license to the
46 ~~Secretary.~~ Secretary on or before the proposed effective date. If the licensee's request does not
47 include a proposed effective date of cancellation, the license is cancelled 15 days after the
48 Department receives the written request. If the license is unable to be returned, the licensee must
49 include a written statement of the reasons, satisfactory to the Secretary, why the license cannot
50 be returned. The Secretary shall notify the licensee when the license is cancelled.

1 (a1) Revocation. – The Secretary may summarily revoke a license issued under this Article
2 when the Secretary finds that the licensee is incurring liability for the tax imposed under this
3 Article after failing to pay a tax when due under this Article. In addition, the Secretary may
4 revoke the license of a licensee that commits one or more of the following acts after holding a
5 hearing on whether the license should be revoked:

6 ...

7 (b) Procedure. – The Secretary must send a person whose license is summarily revoked
8 a notice of the revocation and must give the person an opportunity to have a hearing on the
9 revocation within 10 days after the revocation. The Secretary must give a person whose license
10 may be revoked after a hearing at least 10 days' written notice of the date, time, and place of the
11 hearing. A notice of a summary license revocation and a notice of hearing must be sent by
12 certified mail to the last known address of the licensee. If the person whose license may be
13 revoked fails to attend the noticed hearing, the license revocation is effective 15 days after the
14 noticed hearing.

15"

16 **SECTION 2.3.(b)** G.S. 105-449.76 reads as rewritten:

17 "**§ 105-449.76. Cancellation or revocation of license.**

18 (a) ~~Reasons.~~Cancellation. – The Secretary may cancel a license issued under this Article
19 upon the written request of the ~~licensee~~ licensee. The licensee's request must include a proposed
20 effective date of cancellation and the immediate must return of the license to the
21 Secretary. Secretary on or before the proposed effective date. If the licensee's request does not
22 include a proposed effective date of cancellation, the license is cancelled 15 days after the
23 Department receives the written request. If the license is unable to be returned, the licensee must
24 include a written statement of the reasons, satisfactory to the Secretary, why the license cannot
25 be returned. The Secretary shall notify the licensee when the license is cancelled.

26 (a1) Revocation. – The Secretary may summarily revoke a license issued under this Article
27 when the Secretary finds that the licensee is incurring liability for the tax imposed under this
28 Article after failing to pay a tax when due under this Article. In addition, the Secretary may
29 revoke the license of a licensee that commits one or more of the acts listed in G.S. 105-449.120
30 after holding a hearing on whether the license should be revoked.

31 (b) Procedure. – The Secretary must send a person whose license is summarily revoked
32 a notice of the revocation and must give the person an opportunity to have a hearing on the
33 revocation within 10 days after the revocation. The Secretary must give a person whose license
34 may be revoked after a hearing at least 10 days' written notice of the date, time, and place of the
35 hearing. A notice of a summary license revocation and a notice of hearing must be sent by
36 certified mail to the last known address of the licensee. If the person whose license may be
37 revoked fails to attend the noticed hearing, the license revocation is effective 15 days after the
38 noticed hearing.

39"

40 **SECTION 2.4.** G.S. 105-113.4E reads as rewritten:

41 "**§ 105-113.4E. Modified risk tobacco products.**

42 ...

43 (c) Substantiation. – Generally, tobacco products are subject to the tax imposed under
44 this Article, unless a ~~taxpayer~~ manufacturer substantiates that a product qualifies as a modified
45 risk tobacco product and is subject to a reduced rate of tax in accordance with subsection (b) of
46 this section. A ~~taxpayer~~ manufacturer may substantiate that a product qualifies as a modified risk
47 tobacco product by providing the Department a copy of the order issued by the United States
48 Food and Drug Administration verifying the product as a modified risk tobacco product. Once
49 the ~~taxpayer~~ manufacturer provides the order to the Department, the Department must reduce the
50 tax due as required under subsection (b) of this section effective on the first day of the next
51 calendar month. If the order indicating a product qualifies as a modified risk tobacco product is

1 renewed, the manufacturer must provide the order renewing the product ~~must be provided~~ to the
2 Department within 14 days of receipt.

3 (d) **Forfeiture.** – If the product no longer qualifies as a modified risk tobacco product, the
4 rate reduction under subsection (b) of this section is forfeited. A product no longer qualifies when
5 the order qualifying the product as a modified risk tobacco product expires and is not renewed or
6 the order is withdrawn by the United States Food and Drug Administration. The ~~taxpayer~~
7 manufacturer must provide notice of such expiration or withdrawal to the Department within 14
8 days of receipt. Upon determination by the Department that the product no longer qualifies as a
9 modified risk tobacco product, the Department must determine if the taxpayer paid a reduced
10 rate after the order expired or was withdrawn. If the taxpayer did avoid taxes, the taxpayer is
11 liable for all past taxes avoided as a result of the product no longer qualifying plus interest at the
12 rate established under G.S. 105-241.21, computed from the date the taxes would have been due
13 if the rate reduction had not been allowed. The past taxes and interest are due 30 days after the
14 date the rate reduction is forfeited; a taxpayer that fails to pay the past taxes and interest by the
15 due date is subject to the penalties provided in G.S. 105-236."

16 **SECTION 2.5.(a)** Part 1 of Article 2A of Chapter 105 of the General Statutes is
17 amended by adding a new section to read:

18 **"§ 105-113.4G. Records to be kept.**

19 Every person required to be licensed under this Article and every person required to make
20 reports under this Article shall keep complete and accurate records of all purchases, inventories,
21 sales, shipments, and deliveries of tobacco products, and other information as required under this
22 Article. The records shall be in the form prescribed by the Secretary and shall be open at all times
23 for inspection by the Secretary or an authorized representative of the Secretary.

24 These records shall be safely preserved for a period of three years in a manner to ensure their
25 security and accessibility for inspection by the Department."

26 **SECTION 2.5.(b)** G.S. 105-113.26 and G.S. 105-113.40 are repealed.

27 **SECTION 2.6.(a)** G.S. 105-113.13(b) reads as rewritten:

28 "(b) The Secretary may require a licensed distributor to furnish a bond in an amount that
29 adequately protects the State from ~~loss if the licensed distributor fails a licensed distributor's~~
30 failure to pay taxes due under this Part. A bond must be conditioned on compliance with this
31 Part, payable to the State, and in the form required by the Secretary. The amount of the bond is
32 two times the licensed distributor's average expected monthly tax liability under this Article, as
33 determined by the Secretary, provided the amount of the bond may not be less than two thousand
34 dollars (\$2,000) and may not be more than two million dollars (\$2,000,000). The Secretary
35 should periodically review the sufficiency of bonds required of the licensed distributor and
36 increase the required bond amount if the amount no longer covers the anticipated tax liability of
37 the licensed distributor and decrease the amount if the Secretary finds that a lower bond amount
38 will protect the State adequately from loss.

39 For purposes of this section, a licensed distributor may substitute an irrevocable letter of
40 credit for the secured bond required by this section. The letter of credit must be issued by a
41 commercial bank acceptable to the Secretary and available to the State as a beneficiary. The letter
42 of credit must be in a form acceptable to the Secretary, conditioned upon compliance with this
43 Article, and in the amounts stipulated in this section."

44 **SECTION 2.6.(b)** G.S. 105-113.38 reads as rewritten:

45 **"§ 105-113.38. Bond or irrevocable letter of credit.**

46 The Secretary may require a wholesale dealer or a retail dealer to furnish a bond in an amount
47 that adequately protects the State from ~~loss if the dealer fails a wholesale dealer's or a retail~~
48 dealer's failure to pay taxes due under this Part. A bond must be conditioned on compliance with
49 this Part, payable to the State, and in the form required by the Secretary. The amount of the bond
50 is two times the wholesale or retail dealer's average expected monthly tax liability under this
51 Article, as determined by the Secretary, provided the amount of the bond may not be less than

1 two thousand dollars (\$2,000) and may not be more than two million dollars (\$2,000,000). The
2 Secretary should periodically review the sufficiency of bonds required of dealers, and increase
3 the amount of a required bond when the amount of the bond furnished no longer covers the
4 anticipated tax liability of the wholesale dealer or retail dealer and decrease the amount when the
5 Secretary determines that a smaller bond amount will adequately protect the State from loss.

6 For purposes of this section, a wholesale dealer or a retail dealer may substitute an irrevocable
7 letter of credit for the secured bond required by this section. The letter of credit must be issued
8 by a commercial bank acceptable to the Secretary and available to the State as a beneficiary. The
9 letter of credit must be in a form acceptable to the Secretary, conditioned upon compliance with
10 this Article, and in the amounts stipulated in this section."

11 **SECTION 2.7.** G.S. 105-113.27(b) reads as rewritten:

12 "(b) ~~No~~Except as otherwise provided in this Article, no person shall sell or offer for sale
13 non-tax-paid cigarettes."

14 **SECTION 2.8.(a)** G.S. 105-187.76(2) reads as rewritten:

15 "(2) Commission. – The ~~Mining and Energy~~Oil and Gas Commission."

16 **SECTION 2.8.(b)** G.S. 105-187.77(d) reads as rewritten:

17 "(d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to
18 the ~~Mining and Energy~~ Commission for a determination that the well qualifies as a marginal gas
19 well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate. For
20 severance of gas from a marginal gas well the percentage rate is six-tenths of one percent (0.6%)."

21 **SECTION 2.8.(c)** 105-187.80(h) reads as rewritten:

22 "(h) Commission Determination. – To claim the marginal gas rate, the producer or
23 taxpayer of a proposed or existing gas well shall provide to the Secretary proof that the ~~Mining~~
24 ~~and Energy~~ Commission has determined the well qualifies as a marginal gas well."

25 **SECTION 2.9.** G.S. 105-449.37(a)(1) reads as rewritten:

26 "(1) International Fuel Tax Agreement. – The Articles of Agreement adopted by the
27 International Fuel Tax Association, Inc., as amended as of ~~January 1, 2017~~December 1, 2018."

28 **SECTION 2.10.(a)** G.S. 105-449.47(a1) reads as rewritten:

29 "(a1) License and Decal. – When the Secretary licenses a motor carrier, the Secretary must
30 issue a license for the motor carrier and a set of decals for each qualified motor vehicle. A motor
31 carrier must keep records of decals issued to it and must be able to account for all decals it
32 receives from the Secretary. Licenses and decals issued by the Secretary are for a calendar year.
33 All decals issued by the Secretary remain the property of the State. The Secretary may revoke a
34 license or a decal when a motor carrier fails to comply with this Article or Article 36C or 36D of
35 this Subchapter.

36 A motor carrier must carry a copy of its license in each motor vehicle operated by the motor
37 carrier when the vehicle is in this State. ~~A~~Unless operating under a temporary permit under
38 G.S. 105-449.49, a motor vehicle must clearly display one decal on each side of the vehicle at all
39 times. A decal must be affixed to the qualified motor vehicle for which it was issued in the place
40 and manner designated by the authority that issued it."

41 **SECTION 2.10.(b)** G.S. 105-449.49 reads as rewritten:

42 "**§ 105-449.49. Temporary permits.**

43 (a) ~~Issuance~~Permitting Service. – Upon application to the Secretary and payment of a
44 fee of fifty dollars (\$50.00), a permitting service may obtain a temporary permit authorizing a
45 motor carrier to operate a vehicle in the State for three days without licensing the vehicle in
46 accordance with G.S. 105-449.47. The permitting service may sell the temporary permit to a
47 motor carrier. A motor carrier to whom a temporary permit has been issued may elect not to
48 report its operation of the vehicle during the three-day period. Fees collected under this
49 subsection are credited to the Highway Fund.

50 ...

1 (c) Licensed Motor Carrier. – A licensed motor carrier in North Carolina, who is subject
2 to the International Fuel Tax Agreement, may apply for a temporary permit authorizing the motor
3 carrier to operate a qualified motor vehicle in the State for 30 days without a decal. The licensed
4 motor carrier must be in compliance with this Article, and the application must be on a form
5 prescribed by the Secretary and contain information required by the Secretary.

6 (d) Permit. – A motor carrier operating under a temporary permit issued pursuant to this
7 section must keep a copy of the permit in the motor vehicle."

8 **SECTION 2.11.** G.S. 105-449.69A reads as rewritten:

9 "**§ 105-449.69A. Temporary license during disaster response period.**

10 (a) Temporary License. – The Secretary may grant a temporary license to an applicant to
11 import, export, distribute, or transport motor fuel in this State in response to a state of emergency
12 or a disaster declaration. The term-terms "state of emergency" and "disaster declaration" has-have
13 the same meaning as defined in G.S. 166A-19.3. The temporary license expires upon the
14 expiration of the disaster declaration. A temporary license is effective on the date the applicant
15 engages in business in this State and expires 30 days after that date. Prior to the expiration of the
16 temporary license, the licensee may request, on a form prescribed by the Secretary, that the
17 license be extended for an additional 30 days, if the state of emergency or disaster declaration
18 remains in effect. A temporary license issued under this section may not be renewed or a new
19 temporary license granted if the licensee failed to file the required returns or make payments of
20 the required taxes comply with this Article.

21 (b) Requirements. – To obtain a temporary license, a person must file an application with
22 the Secretary on a form prescribed by the Secretary within seven calendar days from the date of
23 the disaster declaration. An of engaging in business in this State. The application must be filed
24 when a state of emergency or a disaster declaration is in effect and must include all of the
25 following information:

26 "

27 **SECTION 2.12.** G.S. 105-449.134 reads as rewritten:

28 "**§ 105-449.134. Denial, revocation, or cancellation of license.**

29 The Secretary may deny an application for a license or cancel or revoke a license under this
30 Article for the same reasons that the Secretary may deny an application for a license or cancel or
31 revoke a license under Article 36C of this Chapter. The procedure in Article 36C for cancelling
32 or revoking a license applies to the cancellation or revocation of a license under this Article."

33 **SECTION 2.13.** G.S. 119-19(b) reads as rewritten:

34 "(b) Procedure. – The Secretary must send a person whose license is summarily revoked
35 a notice of the revocation and must give the person an opportunity to have a hearing on the
36 revocation within 10 days after the revocation. The Secretary must give a person whose license
37 may be revoked after a hearing at least 10 days' written notice of the date, time, and place of the
38 hearing. A notice of a summary license revocation and a notice of hearing must be sent by
39 registered-certified mail to the last known address of the licensee."

40 **PART III. SALES AND USE TAX CHANGES**

41 **SECTION 3.1.(a)** G.S. 105-164.14 reads as rewritten:

42 "**§ 105-164.14. Certain refunds authorized.**

43 ...

44 (b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity is allowed a semiannual
45 refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal
46 property and services-items for use in carrying on the work of the nonprofit entity. Sales and use
47 tax liability indirectly incurred by a nonprofit entity through reimbursement to an authorized
48 person of the entity for the purchase of tangible personal property and services for use in carrying
49 on the work of the nonprofit entity is considered a direct purchase by the entity. Sales and use
50 tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and
51

1 equipment that become a part of or annexed to any building or structure that is owned or leased
 2 by the nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity
 3 for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct
 4 purchases by the nonprofit entity. The refund allowed under this subsection does not apply to
 5 purchases of electricity, telecommunications service, ancillary service, piped natural gas, video
 6 programming, or a prepaid meal plan. A request for a refund must be in writing and must include
 7 any information and documentation required by the Secretary. A request for a refund for the first
 8 six months of a calendar year is due the following October 15; a request for a refund for the
 9 second six months of a calendar year is due the following April 15. The aggregate annual refund
 10 amount allowed an entity under this subsection for the State's fiscal year may not exceed
 11 thirty-one million seven hundred thousand dollars (\$31,700,000).

12 The refunds allowed under this subsection do not apply to an entity that is owned and
 13 controlled by the United States or to an entity that is owned or controlled by the State and is not
 14 listed in this subsection. A hospital that is not listed in this subsection is allowed a semiannual
 15 refund of sales and use taxes paid by it on over-the-counter drugs purchased for use in carrying
 16 out its work. The following nonprofit entities are allowed a refund under this subsection:

17 ...

18 (c) Certain Governmental Entities. – A governmental entity listed in this subsection is
 19 allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases
 20 of ~~tangible personal property and services items~~. Sales and use tax liability indirectly incurred
 21 by a governmental entity on building materials, supplies, fixtures, and equipment that become a
 22 part of or annexed to any building or structure that is owned or leased by the governmental entity
 23 and is being erected, altered, or repaired for use by the governmental entity is considered a sales
 24 or use tax liability incurred on direct purchases by the governmental entity for the purpose of this
 25 subsection. The refund allowed under this subsection does not apply to purchases of electricity,
 26 telecommunications service, ancillary service, piped natural gas, video programming, or a
 27 prepaid meal plan. A request for a refund must be in writing and must include any information
 28 and documentation required by the Secretary. A request for a refund is due within six months
 29 after the end of the governmental entity's fiscal year.

30 This subsection applies only to the following governmental entities:

31"

32 **SECTION 3.1.(b)** This section becomes effective July 1, 2020, and applies to
 33 purchases made on or after that date.

34 **SECTION 3.2.** G.S. 105-164.16(d) reads as rewritten:

35 "(d) Use Tax on ~~Out-of-State Purchases~~. – Use tax payable by an individual who purchases
 36 an item, other than a boat or aircraft, ~~outside the State~~ for a nonbusiness purpose is due on an
 37 annual basis. For an individual who is not required to file an individual income tax return under
 38 Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar
 39 year and a use tax return is due by the following April 15. For an individual who is required to
 40 file an individual income tax return, the annual reporting period ends on the last day of the
 41 individual's income tax year, and the use tax must be paid on the income tax return as provided
 42 in G.S. 105-269.14."

43 **SECTION 3.3.(a)** G.S. 105-164.4J reads as rewritten:

44 "**§ 105-164.4J. Marketplace-facilitated sales.**

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

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

49 (2) ~~Two hundred or more separate transactions.~~

50 (b) Payment of Tax. – A marketplace facilitator ~~that meets the threshold in subsection (a)~~
 51 ~~of subject to~~ this section is considered the retailer of each marketplace-facilitated sale it makes

1 and is liable for collecting and remitting the sales and use tax on all such sales. A marketplace
2 facilitator is required to comply with the same requirements and procedures as all other retailers
3 registered or who are required to be registered to collect and remit sales and use tax in this State.
4 A marketplace facilitator is required to collect and remit sales tax as required by this section
5 regardless of whether a marketplace seller for whom it makes a marketplace-facilitated sale meets
6 any of the following conditions:

7"

8 **SECTION 3.3.(b)** This section becomes effective July 1, 2020, and applies to sales
9 occurring on or after that date.

10 **SECTION 3.4.** G.S. 105-164.4(a)(1) reads as rewritten:

11 "(1) The general rate of tax applies to the following items sold at retail:

12 ...

- 13 b. The sales price of certain digital property. The tax applies regardless
14 of whether the purchaser of the property has a right to use it
15 permanently or to use it without making continued payments. The sale
16 at retail or the use, storage, or consumption in this State of a digital
17 code is treated the same as the sale at retail or the use, storage, or
18 consumption in this State of certain digital property for which the
19 digital code relates."

20 **SECTION 3.5.(a)** G.S. 153A-154.1 reads as rewritten:

21 "**§ 153A-154.1. Uniform ~~penalties-provisions~~ for local meals taxes.**

22 (a) Scope. – This section applies to every county authorized by the General Assembly to
23 levy a meals tax. To the extent this section conflicts with any provision of a local act, this section
24 supersedes that provision.

25 (b) Collection. – A retailer who is required to remit to the Department of Revenue the
26 State and local sales and use tax is required to remit the local meals tax on prepared food and
27 beverages to the taxing county on and after the effective date of the levy of the local meals tax.

28 (a)(c) Penalties. – ~~Notwithstanding any other provision of law, the~~ The civil and criminal
29 penalties that apply to State sales and use taxes under Chapter 105 of the General Statutes apply
30 to local meals taxes. The governing board of a taxing county has the same authority to waive the
31 penalties for a local meals tax that the Secretary of Revenue has to waive the penalties for State
32 sales and use taxes.

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

34 (1) Meals tax. – A tax on prepared food and beverages.

35 (2) Prepared food and beverages. – The term means both of the following:

36 a. Prepared food, as defined in G.S. 105-164.3.

37 b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least
38 one of the conditions of prepared food under G.S. 105-164.3.

39 (b) Scope. – ~~This section applies to every county authorized by the General Assembly to~~
40 ~~levy a meals tax. As used in this section, the term "meals tax" means a tax on prepared food and~~
41 ~~drink."~~

42 **SECTION 3.5.(b)** G.S. 160A-214.1 reads as rewritten:

43 "**§ 160A-214.1. Uniform ~~penalties-provisions~~ for local meals taxes.**

44 (a) Scope. – This section applies to every city authorized by the General Assembly to
45 levy a meals tax. To the extent this section conflicts with any provision of a local act, this section
46 supersedes that provision.

47 (b) Collection. – A retailer who is required to remit to the Department of Revenue the
48 State and local sales and use tax is required to remit the local meals tax on prepared food and
49 beverages to the taxing city on and after the effective date of the levy of the local meals tax.

50 (a)(c) Penalties. – ~~Notwithstanding any other provision of law, the~~ The civil and criminal
51 penalties that apply to State sales and use taxes under Chapter 105 of the General Statutes apply

1 to local meals taxes. The governing board of a taxing city has the same authority to waive the
2 penalties for a meals tax that the Secretary of Revenue has to waive the penalties for State sales
3 and use taxes.

4 ~~(b) Scope.—This section applies to every city authorized by the General Assembly to~~
5 ~~levy a meals tax.~~

6 ~~(e)~~(d) Definitions. – The following definitions apply in this section:

7 (1) City. – A municipality.

8 (2) Meals tax. – A tax on prepared food and ~~drink~~ beverages.

9 (3) Prepared food and beverages. – The term means both of the following:

10 a. Prepared food, as defined in G.S. 105-164.3.

11 b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least
12 one of the conditions of prepared food under G.S. 105-164.3."

13 **SECTION 3.5.(c)** This section becomes effective July 1, 2020, and applies to sales
14 occurring on or after that date.

15 16 **PART IV. PERSONAL INCOME TAX CHANGES**

17 **SECTION 4.1.** G.S. 105-131.8(a) reads as rewritten:

18 "(a) For purposes of G.S. ~~105-154~~105-153.9 and G.S. 105-160.4, each resident
19 shareholder is considered to have paid a tax imposed on the shareholder in an amount equal to
20 the shareholder's pro rata share of any net income tax paid by the S Corporation to a state that
21 does not measure the income of S Corporation shareholders by the income of the S Corporation.
22 For purposes of the preceding sentence, the term "net income tax" means any tax imposed on or
23 measured by a corporation's net income."

24 **SECTION 4.2.** G.S. 105-153.5(b)(10) is repealed.

25 **SECTION 4.3.** G.S. 105-154(d) reads as rewritten:

26 "(d) Payment of Tax on Behalf of Nonresident Owner or Partner. – If a business conducted
27 in this State is owned by a nonresident individual or by a partnership having one or more
28 nonresident members, the manager of the business shall report information concerning the
29 earnings of the business in this State, the distributive share of the income of each nonresident
30 owner or partner, and any other information required by the Secretary. The distributive share of
31 the income of each nonresident partner includes any guaranteed payments made to the partner.
32 The manager of the business shall pay with the return the tax on each nonresident owner or
33 partner's share of the income computed at the rate levied on individuals under G.S. 105-153.7.
34 The business may deduct the payment for each nonresident owner or partner from the owner or
35 partner's distributive share of the income of the business in this State. If the nonresident partner
36 is not an individual and the partner has executed an affirmation that the partner will pay the tax
37 with its corporate, partnership, trust, or estate income tax return, the manager of the business is
38 not required to pay the tax on the partner's share. In this case, the manager shall include a copy
39 of the affirmation with the report required by this subsection. The affirmation must be annually
40 filed by the nonresident partner and submitted by the manager by the due date of the report
41 required in this subsection. Otherwise, the manager of the business is required to pay the tax on
42 the nonresident partner's share. Notwithstanding the provisions of G.S. 105-241.7(b), the
43 manager of the business may not request a refund of an overpayment made on behalf of a
44 nonresident owner or partner if the manager of the business has previously filed the return and
45 paid the tax due. The nonresident owner or partner may, on its own income tax return, request a
46 refund of an overpayment made on its behalf by the manager of the business within the provisions
47 of G.S. 105-241.6."

48 **SECTION 4.4.(a)** G.S. 105-228.90(b) reads as rewritten:

49 "(b) Definitions. – The following definitions apply in this Article:

50 ...

1 (9) Taxpayer Identification Number (TIN). – An identification number issued by
2 the Social Security Administration or the Internal Revenue Service, excluding
3 a Taxpayer Identification Number for Pending U.S. Adoptions (ATIN) and
4 Preparer Taxpayer Identification Number (PTIN).

5 (10) Truncated Taxpayer Identification Number (TTIN). – This term has the same
6 meaning as defined in Treasury Regulation Section 301.6109-4."

7 **SECTION 4.4.(b)** Article 9 of Chapter 105 of the General Statutes is amended by
8 adding a new section to read:

9 "**§ 105-252.1. Use of a TTIN.**

10 A TTIN may not be used on any return, statement, or other document required to be filed
11 with or furnished to the Department unless specifically authorized in this Chapter."

12 **SECTION 4.4.(c)** G.S. 105-163.1(12a) reads as rewritten:

13 "~~(12a) Taxpayer Identification Number (TIN). – An identification number issued by~~
14 ~~the Social Security Administration or the Internal Revenue Service excluding~~
15 ~~Taxpayer Identification Number for Pending U.S. Adoptions (ATIN) and~~
16 ~~Preparer Taxpayer Identification Number (PTIN). Defined in~~
17 G.S. 105-228.90(b)(9)."

18 **SECTION 4.5.** G.S. 105-241.13 reads as rewritten:

19 "**§ 105-241.13. Action on request for review.**

20 ...

21 (b) Conference. – When the Department and the taxpayer agree that an action taken under
22 subsection (a) or (a1) of this section resolves the taxpayer's objection to the Department's
23 proposed denial of a refund or a proposed assessment, the Department does not need to take
24 further action on the request for review. When an action taken under subsection (a) or (a1) of this
25 section does not resolve the taxpayer's objection to the Department's proposed denial of a refund
26 or a proposed assessment, the Department must schedule a conference with the taxpayer. The
27 Department must set the time and place for the conference, which may include a conference by
28 telephone, and must send the taxpayer notice of the designated time and place. The Department
29 must send the notice at least 30 days before the date of the conference or, if the Department and
30 the taxpayer agree, within a shorter period. The Department and the taxpayer may reschedule the
31 conference by mutual agreement. If a taxpayer fails to attend a scheduled conference on the
32 proposed denial of a refund or a proposed assessment, the Department and the taxpayer are
33 considered to be unable to resolve the taxpayer's objection.

34 The conference is an informal proceeding at which the taxpayer and the Department must
35 attempt to resolve the case. Testimony under oath is not taken, and the rules of evidence do not
36 apply. A taxpayer may designate a representative to act on the taxpayer's behalf. The taxpayer
37 may present any objections to the proposed denial of refund or proposed assessment at the
38 conference and is not limited by the explanation set forth in the taxpayer's request for review.

39 (c) After Conference. – One of the following must occur after the Department conducts
40 a conference on a proposed denial of a refund or a proposed assessment:

41 ...

42 (3) The Department and the taxpayer are unable to resolve the taxpayer's
43 objection to the proposed denial of the refund or proposed assessment. ~~If a~~
44 ~~taxpayer fails to attend a scheduled conference on the proposed denial of a~~
45 ~~refund or a proposed assessment without prior notice to the Department, the~~
46 ~~Department and the taxpayer are considered to be unable to resolve the~~
47 ~~taxpayer's objection."~~

48
49 **PART V. CORPORATE TAX CHANGES**

50 **SECTION 5.1.(a)** G.S. 105-122(b)(2) reads as rewritten:

1 (2) An addition for the amount of indebtedness the corporation owes that creates
2 net interest expense, as defined in G.S. 105-130.7B(b)(3), but does not create
3 qualified interest expense, as defined in G.S. 105-130.7B(b)(4) to a parent, a
4 subsidiary, an affiliate, or a noncorporate entity in which the corporation or
5 an affiliated group of corporations owns directly or indirectly more than fifty
6 percent (50%) of the capital interests of the noncorporate entity. The amount
7 added back to the corporation's net worth may be further adjusted if part of
8 the capital of the creditor is capital borrowed from a source other than a parent,
9 a subsidiary, or an affiliate. The debtor corporation may deduct a
10 proportionate part of the indebtedness based on the ratio of the borrowed
11 capital of the creditor to the total assets of the creditor. For purposes of this
12 subdivision, borrowed capital does not include indebtedness incurred by a
13 bank arising out of the receipt of a deposit and evidenced by a certificate of
14 deposit, a passbook, a cashier's check, a certified check, or other similar
15 document."

16 **SECTION 5.1.(b)** This section is effective for taxable years beginning on or after
17 January 1, 2021, and applicable to the calculation of franchise tax reported on the 2020 and later
18 corporate income tax returns.

19 **SECTION 5.2.(a)** G.S. 105-130.4(1) reads as rewritten:

20 "(1) Wholesale Content Distributors. – A wholesale content distributor's market for
21 receipts is in this State as provided in G.S. 105-130.4A. In no event may the amount of ~~income~~
22 apportioned receipts sourced to this State be less than the amount determined under this
23 subsection. The amount determined under this subsection is the total domestic gross receipts of
24 the wholesale content distributor from advertising and licensing activities multiplied by two
25 percent (2%). For purposes of this section, the term "wholesale content distributor" has the same
26 meaning as defined in G.S. 105-130.4A."

27 **SECTION 5.2.(b)** G.S. 105-122(c1)(1) reads as rewritten:

28 "(1) Statutory. – A corporation that is subject to income tax under Article 4 of this
29 Chapter must apportion its net worth by using the fraction it applies in
30 apportioning its income under that Article. A corporation that is not subject to
31 income tax under Article 4 of this Chapter must apportion its net worth by
32 using the fraction it would be required to apply in apportioning its income if
33 it were subject to that Article. ~~The apportionment fraction for a wholesale~~
34 ~~content distributor, as that term is defined in G.S. 105-130.4A, shall not be~~
35 ~~less than two percent (2%).~~ The apportionment method set out in this
36 subdivision is considered the statutory method of apportionment and is
37 presumed to be the best method of determining the amount of a corporation's
38 net worth attributable to the corporation's business in this State."

39 **SECTION 5.2.(c)** This section is effective for taxable years beginning on or after
40 January 1, 2020.

41 **SECTION 5.3.** Subdivisions (a)(21) and (b)(25) of G.S. 105-130.5 are repealed.

42 **SECTION 5.4.** G.S. 105-130.5A(k) reads as rewritten:

43 "(k) Proposed Assessment or Refund. – If the Secretary redetermines the State net income
44 of the corporation in accordance with this section by adjusting the State net income of the
45 corporation or requiring a combined return, the Secretary shall issue a proposed assessment or
46 refund upon making such redetermination. When a refund is determined in whole or part by a
47 proposed assessment to an affiliated group member under this section, the refund shall not be
48 issued until the proposed assessment to the affiliated group member has become collectable under
49 G.S. 105-241.22. The amount of refund shall reflect any changes made by the Department under
50 this section. ~~The~~ Otherwise, the procedures for a proposed assessment or a refund in Article 9 of
51 Chapter 105 shall be applicable to proposed assessments and refunds made under this section."

1 **SECTION 5.5.** G.S. 105-130.11(b)(4) is repealed.

2
3 **PART VI. TAX ENFORCEMENT AND ADMINISTRATION CHANGES**

4 **SECTION 6.1.** G.S. 105-236.1(a)(3) reads as rewritten:

5 "(3) The following criminal offenses when they involve a tax imposed under
6 Chapter 105 of the General Statutes:

7 ...

8 h. G.S. 105-259 (Secrecy of tax information)."

9 **SECTION 6.2.(a)** G.S. 105-241.8(b)(2) reads as rewritten:

10 "(2) Failure to file or filing false return. – There is no statute of limitations and the
11 Secretary may propose an assessment of tax due from a taxpayer at any time
12 if any of the following applies:

13 ...

14 d. The taxpayer, as a trustee, collected taxes on behalf of the State, but
15 did not remit all the taxes held in trust when due."

16 **SECTION 6.2.(b)** This section is effective when it becomes law and applies to
17 assessments not barred by the statute of limitations prior to that date.

18 **SECTION 6.3.** G.S. 105-242.2 is amended by adding a new subsection to read:

19 "(f) Scope. – This section shall not apply to, or limit, the criminal liability of any person."

20 **SECTION 6.4.(a)** G.S. 105-243.1 reads as rewritten:

21 **"§ 105-243.1. Collection of tax debts.**

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

23 (1) Overdue tax debt. – Any part of a tax debt that remains unpaid ~~90~~60 days or
24 more after it becomes collectible under G.S. 105-241.22. The term does not
25 include a tax debt for which the taxpayer entered into an installment
26 agreement for the tax debt under G.S. 105-237 within ~~90~~60 days after the tax
27 debt became collectible, if the taxpayer has not failed to make any payments
28 due under the installment agreement.

29 ...

30 (d) Fee. – A collection assistance fee is imposed on an overdue tax ~~debt that remains~~
31 ~~unpaid 60 days or more after the tax debt is deemed collectible under G.S. 105-241.22.~~ debt. In
32 order to impose a collection assistance fee on a tax debt, the Department must notify the taxpayer
33 that the fee will be imposed ~~if the tax debt is not paid in full within 60 days after the date the~~
34 ~~notice of collection was mailed to the taxpayer.~~ in accordance with this section at least 60 days
35 prior to its imposition. The fee notice may be included on the notice of collection. The fee is
36 collectible as part of the debt. The Secretary may waive the fee pursuant to G.S. 105-237 to the
37 same extent as if it were a penalty.

38 The amount of the collection assistance fee is twenty percent (20%) of the amount of the
39 overdue tax debt. If a taxpayer pays only part of an overdue tax debt, the payment is credited
40 proportionally to fee revenue and tax revenue.

41 "

42 **SECTION 6.4.(b)** Section 5.1(b) of S.L. 2019-169 reads as rewritten:

43 "**SECTION 5.1.(b)** This section becomes effective ~~January 1, 2020,~~ August 1, 2020, and
44 applies to tax debts that become collectible on or after that date."

45 **SECTION 6.4.(c)** Subsection (a) of this section becomes effective August 1, 2020,
46 and applies to tax debts that become collectible on or after that date. The remainder of this section
47 is effective when it becomes law.

48 **SECTION 6.5.** G.S. 93B-1(3) reads as rewritten:

49 "(3) State agency licensing board. – Any State agency staffed by full-time State
50 employees, which as part of their regular functions issue licenses. This section
51 does not apply to the North Carolina Criminal Justice Education and Training

1 Standards ~~Commission and Commission~~, the North Carolina Sheriffs'
2 Education and Training Standards ~~Commission~~.Commission, and the North
3 Carolina Department of Revenue. The following is a nonexclusive list of State
4 agency licensing boards and the profession or occupation for which the board,
5 agency, or officer may issue licenses:
6"
7

8 **PART VII. EXTEND CERTAIN SUNSETS**

9 **SECTION 7.1.** G.S. 105-269.8(c) reads as rewritten:

10 "(c) Sunset. – This section expires for taxable years beginning on or after January 1,
11 ~~2021-2026~~."

12 **SECTION 7.2.** G.S. 160A-239.1(b) reads as rewritten:

13 "(b) Sunset. – This Article expires July 1, ~~2020~~,2025, for projects that have not been
14 approved under a final assessment resolution. The expiration does not affect the validity of
15 assessments imposed or to be imposed or bonds issued or authorized or to be issued or authorized
16 under the provisions of this Article if a final assessment resolution has been adopted prior to the
17 effective date of the expiration."
18

19 **PART VIII. EFFECTIVE DATE**

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

21 law.



Bill Draft 2019-BAxfz-22A: Revenue Laws Recommendations.

2019-2020 General Assembly

Committee:	Date:	May 13, 2020
Introduced by:	Prepared by:	Finance Team
Analysis of:	2019-BAxfz-22A	

OVERVIEW: *Bill Draft 2019-BAxfz-22A makes various changes to the revenue laws.*

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

Section	Explanation	Effective Date
PART I. IRC UPDATE		
Part I would update North Carolina's Code reference from January 1, 2019, to May 1, 2020. Congress enacted two bills since January 1, 2019 that change the federal tax laws: Public Law 116-94, enacted on December 20, 2019, and Public Law 116-136, enacted on March 27, 2020. Public Law 116-94 incorporated the <i>Taxpayer Certainty and Disaster Tax Relief Act of 2019</i> . The Act extended certain individual and business-related tax provisions. Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, provided tax relief to individuals and businesses. This Part conforms to one of the “extenders” and decouples from the other provisions.		
1(a)	Updates North Carolina's Code reference from January 1, 2019, to May 1, 2020. This would conform the State to the reduction of the threshold amount for the medical expense deduction ¹ from 10% to 7.5% for the 2019 and 2020 tax years.	When it becomes law.
1(b)	Decouples from the following federal tax provisions, requiring these items to be added to federal taxable income when determining corporate net income at the State level: <ul style="list-style-type: none"> Increase of the percentage of a taxpayer's adjusted taxable income that factors into the calculation of the limitation on deduction of business interest from 30% to 50% for taxable years 2019 and 2020. 	When it becomes law.

¹ North Carolina decoupled from many of the federal income tax deductions and credits when it reformed its tax laws in 2013. One of the federal deductions the State continues to piggy-back is the medical expense deduction that allows a taxpayer to deduct unreimbursed medical expenses for the year that exceed 10% of the taxpayer's adjusted gross income. In December, Congress changed the threshold amount to 7.5% for taxable years 2019 and 2020. However, under our Code reference date, the threshold amount for State tax purposes continues to be 10%.

Karen Cochrane-Brown
Director



2019-BAxfz-22A-SMBA-108-V-3

Legislative Analysis
Division
919-733-2578

	<ul style="list-style-type: none"> • Loan forgiveness of a covered loan, which is a loan forgiven under the Paycheck Protection Program. 	
1(c)	Decouples from the federal tax provision that provides for a temporary suspension of the limitations on charitable contributions during 2020.	When it becomes law.
1(d)-(e)	<p>Decouples from the following provisions, which the State has historically decoupled from:</p> <ul style="list-style-type: none"> • Income exclusion for forgiveness of debt on primary residence. • Mortgage insurance deductible as mortgage interest. • Deduction for tuition and expenses. <p>Section 1(e) also decouples from the following federal tax provisions, requiring these items to be added to federal adjusted gross income when determining individual taxable income at the State level:</p> <ul style="list-style-type: none"> • Modifications for net operating losses, including the suspension of the 80% taxable income limitation and the five-year carryback period. • Exclusion from wages and gross income of employer-provided payments on student loans for the 2020 tax year. • Increase of the percentage of a taxpayer's adjusted taxable income that factors into the calculation of the limitation on deduction of business interest from 30% to 50% for taxable years 2019 and 2020. • \$300 above-the-line deduction for charitable contributions. • Loan forgiveness of a covered loan, which is a loan forgiven under the Paycheck Protection Program. 	When it becomes law.
PART II. EXCISE TAX CHANGES		
2.1	Clarifies that a sale of a tobacco product applies to the transfer of the product, regardless of whether it is a transfer of possession, a transfer of ownership, or both. The excise tax on tobacco products is levied on the sale or possession for sale in this State.	When it becomes law.
2.2	More accurately describes the Department administrative obligation to provide licensees a list of other licensees' names, addresses, and identifying information. In the future, the Department plans to make this information available by electronic, automated distribution. The change from "must provide" to "make available" more accurately describes the Department's obligation in these circumstances.	When it becomes law.

	<p>Subsection (a) would apply to the list of licensees under Article 2A, Tobacco Products Excise Tax. This subsection also clarifies that a license must be conspicuously displayed at each place of business for which the license is issued. This language is consistent with the language in the motor fuel excise tax statute under G.S. 105-449.74.</p> <p>Subsection (b) would make a change in the list of tax information the Department may provide under the tax secrecy statute to conform to the change made in subsection (a). This subsection also limits the dissemination of this list to entities licensed under Article 2A, consistent with the statute under Article 2A.</p> <p>Subsection (c) would apply to the list of licensees under Article 36C, the Motor Fuels Excise Tax. This subsection also provides that the list must be updated monthly. This requirement conforms with the Department's current practice.</p> <p>Subsection (d) would apply to the list of licensees under Article 36D, Excise Tax on Alternative Fuel.</p>	
2.3	<p>Makes the differentiation between cancellation and revocation of a license issued under Article 2A or under Article 36C clearer by placing cancellation of a license under one subsection, and the revocation of a license under a different one.</p> <p>A licensee may request the Department to cancel a license upon written request and the return of the license to the Department. This subsection provides clarity as to the effective date of a canceled license. The effective date of the cancellation would be the date proposed by the licensee or, if the licensee does not propose a cancellation date, 15 days after the Department receives the written request from the licensee to cancel the license. The Department must notify the licensee of the cancellation date. It also provides that a licensee who is unable to return the license may include with the cancellation notice a written statement of the reasons why the license cannot be returned.</p>	When it becomes law.
2.4	<p>Requires the manufacturer of a modified risk tobacco product, not the taxpayer, to substantiate that a tobacco product is a modified risk tobacco product, and to notify the Department if the product becomes unqualified. The change streamlines the reporting process, eliminates duplicative notifications, and treats taxpayers equally based on the product sold. The tax rate on a modified risk tobacco product is substantially reduced. The tax is paid by the distributor of the product, which may not be the manufacturer of the product.</p> <p>A modified risk tobacco product is a tobacco product sold or distributed for use to reduce the harm or risk of tobacco-related disease. To qualify as a modified risk tobacco product, the product</p>	When it becomes law.

	must be issued a risk modification order, or an exposure modification order, by the United States Food and Drug Administration.	
2.5	Consolidates the record-keeping requirements for cigarettes and other tobacco products (OTP) into one statute because the requirements are substantially the same. Subsection (a) places the record-keeping requirements in the general provisions that apply to all tobacco products. Subsection (b) eliminates the duplicative statutes that are no longer needed.	When it becomes law.
2.6	Clarifies that a bond or irrevocable letter of credit is required in all circumstances, which is the current practice of the Department. The purpose of the bond or letter of credit is to protect the State from a person's failure to pay the tax due. Subsection (a) applies to a licensed distributor of cigarettes and subsection (b) applies to a wholesale dealer or a retail dealer of OTP.	When it becomes law.
2.7	Clarifies that manufacturers may be exempt from paying tax on cigarettes, as provided in G.S. 105-113.10.	When it becomes law.
2.8	Replaces the name "Mining and Energy Commission" with the correct name "Oil and Gas Commission".	When it becomes law.
2.9	Updates the reference to the International Fuel Tax Agreement (IFTA) from January 1, 2017, to December 1, 2018. IFTA is an agreement between member taxing jurisdictions to assist each other in the collection and administration of taxes paid by interstate motor carriers on their use of motor fuel. NC has been a member of IFTA since 1992. The update in the reference does not make any substantive changes to the tax laws concerning motor carriers.	When it becomes law.
2.10	Clarifies that a qualified motor vehicle may operate in this State without displaying decals when the motor carrier is operating under a temporary permit issued under G.S. 105-449.19 or under the IFTA Articles of Agreement. The motor carrier must keep a copy of the temporary permit in the vehicle when the vehicle is in this State.	When it becomes law.
2.11	<p>Provides clarity to the temporary license to import, export, distribute, or transport motor fuel in this State during a disaster response period. The General Assembly enacted legislation allowing the issuance of the temporary permit in S.L. 2019-187. The temporary permit allows a person to operate in this State without requiring the applicant to file a bond or irrevocable letter of credit with the Secretary, and without requiring the applicant to be authorized to transact business in this State with the Secretary of State. This section makes the following changes to ensure the temporary permit accomplishes its intent:</p> <ul style="list-style-type: none">• It allows the Secretary to issue the temporary permit in response to a state of emergency, as well as a disaster	When it becomes law.

	<p>declaration. A disaster declaration may include a state of emergency, but a state of emergency may not rise to the level of a disaster declaration.</p> <ul style="list-style-type: none"> • A person may file an application for a temporary permit within seven days of engaging in business in this State, as opposed to within seven days from the date of the disaster declaration. • A temporary permit expires 30 days after its effective date, rather than the expiration of the disaster declaration. Disaster declarations may last for an indefinite period of time, and may end without notice to the licensee. This change provides certainty. • A temporary permit maybe extended for an additional 30 days, if the state of emergency or disaster declaration remains in effect. To be extended, the licensee must request an extension from the Secretary prior to the expiration of the license. 	
2.12	Clarifies that the process for cancelling a license under Article 36C (Motor Fuels) also applies to the process for cancelling a license under Article 36D (Alternative Fuels).	When it becomes law.
2.13	Requires a notice of hearing for revocation of a kerosene license be sent by certified mail rather than registered mail. The General Assembly made the same procedural change in S.L. 2019-6 and S.L. 2019-169 for tobacco products license revocations and motor fuel license revocations.	When it becomes law.
PART III. SALES AND USE TAX		
3.1	<p>Allows nonprofit and governmental entities to apply for a State and local sales tax refund for sales tax paid on certain digital property, to the same extent as allowed for local school administrative units.</p> <p>Nonprofit and governmental entities may apply for a sales tax refund of sales tax paid on tangible personal property and services. Effective October 1, 2019, the General Assembly expanded the taxability of certain digital property. (S.L. 2019-169). That legislation changed the term “tangible personal property and services” to “items” in most instances and defined the term “items” as “tangible personal property, certain digital property, or services.” This change was made for the local sales tax refund allowed to local school administrative units, but it was not changed for the sales tax refund allowed for nonprofit and governmental entities.</p>	July 1, 2020, and applicable to purchases made on or after that date.

	This section would provide consistency in the applicability of the sales tax refund allowed to nonprofit and governmental entities and local school administrative units.	
3.2	Removes obsolete language. Under current law, a retailer making remote sales into North Carolina must collect and remit the State's use tax if the retailer meets the statutory minimum level of remote sales into North Carolina: 200 transactions or gross sales in excess of \$100,000.	When it becomes law.
3.3	Clarifies that the economic nexus threshold applies only to remote marketplace facilitators. Marketplace facilitators that have a physical presence in North Carolina are required to collect and remit sales tax on the first dollar of sales sourced to this State.	July 1, 2020, and applicable to sales occurring on or after that date.
3.4	Clarifies that a digital code is taxed in the same manner as the certain digital property for which the digital code relates.	When law it becomes law.
3.5	<p>Requires marketplace facilitators who transact retail sales of prepared food and beverage to collect and remit local meals tax to the taxing city or county and codifies into the General Statutes the existing definition of "prepared food and beverages" used by the five localities with a meals tax.</p> <p>Last year, the General Assembly enacted marketplace facilitator language requiring entities that facilitate sales for third party sellers to collect and remit sales tax. There are two types of transactions where an additional local tax applies: the rental of accommodations and the sale of prepared food and beverages. The rental of accommodations is subject to sales and use tax as well as local occupancy tax. The sale of prepared food and beverages is subject to sales and use tax and local meals tax. A marketplace facilitator is required to collect and remit both types of taxes because they are deemed the "retailer" for these transactions.</p> <p>The General Assembly initially addressed accommodation facilitators in 2010 and added corresponding language to the "Uniform provisions for room occupancy taxes" statute stating that, to the extent a retailer is required to remit sales tax on accommodations to the Department of Revenue, the retailer must also remit local occupancy tax on that transaction to the taxing city or county, as applicable.</p> <p>Similar language is needed to require marketplace facilitators that transact sales of prepared food and beverage to collect and remit local meals tax. This requirement will apply only in the localities that levy a meals tax, which are: Dare County, Wake County, Mecklenburg County, Cumberland County, and the Town of Hillsborough. Examples of marketplace facilitators that might be impacted would be Grub Hub, Uber Eats, Door Dash, and Postmates.</p>	July 1, 2020, and applicable to sales occurring on or after that date.

PART IV. PERSONAL INCOME TAX		
4.1	Corrects a statutory cite. S.L. 2013-316 recodified G.S. 105-151 as G.S. 105-153.9.	When it becomes law.
4.2	Repeals an obsolete deduction. In 2009, federal law allowed certain taxpayers to elect to defer reporting cancellation of debt income in 2009 and 2010, and instead report the income ratably over a five-year period beginning in 2014. North Carolina decoupled from this provision. For State individual income tax purposes, taxpayers recognized the income in 2009 and 2010, and could deduct the amount recognized as income for federal tax purposes for tax years 2014-2018 so the income was not taxed twice for State tax purposes. The need for this deduction has expired.	When it becomes law.
4.3	Codifies an existing Departmental practice. A nonresident partner that is not an individual may execute a nonresident partner affirmation to affirm that the nonresident partner will timely file a separate income tax return and report the partner's share of the partnership income to North Carolina. The statute does not give a due date for the affirmation to be filed. The Secretary has published guidance to taxpayers that requires the affirmation to be filed by the due date of the original return. <i>(See North Carolina Personal Taxes Bulletins, Nonresident Partners)</i>	When it becomes law.
4.4	Requires full taxpayer identification numbers when tax documents are filed with the Department of Revenue. The IRS allows truncated identification numbers on certain tax documents to protect taxpayer identity. A truncated taxpayer identification number (TTIN) is a social security number or other identification number where the first 5 digits are omitted (e.g., XXX-XX-1234). The IRS requires full identification numbers when tax documents are filed with the IRS.	When it becomes law.
4.5	Clarifies that a taxpayer conference may only be rescheduled upon mutual agreement of the Department and the taxpayer. This section also moves a sentence to the more appropriate place in the statute; it does not make a substantive difference.	When it becomes law.
PART V. CORPORATE TAX CHANGES		
5.1	Simplifies the affiliated indebtedness addback to conform to the calculation already required in computing the interest deduction for income tax purposes.	Taxable years beginning on or after January 1, 2021, and applicable to the calculation of franchise tax on the 2020 and later

		corporate income tax returns.
5.2	<p>Clarifies that the amount of receipts sourced to NC for a wholesale content distributor may not be less than 2% of the receipts received from advertising and licensing.</p> <p>Subsection (a) replaces the term "income apportioned" with the more appropriate term "receipts sourced". Subsection (b) removes the reference to this floor in the franchise tax statute because the general law is sufficient. The general law provides that a company subject to income tax in this State must apportion its net worth by using the fraction it applies in apportioning its income to the State.</p>	Taxable years beginning on or after January 1, 2020.
5.3	Repeals obsolete income tax adjustments. <i>See explanation of the same individual income tax change in Section 4.2.</i>	When it becomes law.
5.4	Prevents refunds based on a proposed adjustment for intercompany transactions to be issued prior to the resolution of the corresponding proposed assessment, and the loss of the statute of limitations for the refund to be adjusted consistent with the settlement of the assessment amount.	When it becomes law.
5.5	Repeals obsolete tax provision. The federal Tax Cut and Jobs Act of 2017 imposed the unrelated business income tax on certain transportation fringe benefits, including parking, provided by nonprofit organizations to their employees. North Carolina enacted this exclusion to ensure the expenses would not be taxable for State tax purposes. The Taxpayer Certainty and Disaster Relief Act of 2019 repealed the federal tax provision retroactively. The provision is no longer needed.	When it becomes law.
PART VI. TAX ENFORCEMENT AND ADMINISTRATIVE CHANGES		
6.1	Adds the responsibility and subject-matter jurisdiction to enforce violations and criminal offenses concerning taxpayer information security to the Department's Criminal Investigations Division.	When it becomes law.
6.2	Provides that there is no statute of limitations applicable to a tax assessment for trust taxes collected but not remitted to the State. Trust taxes include sales and use tax and income tax withholdings. Under current law, the Department cannot assess a taxpayer for any tax collected but not remitted beyond three years unless the Department can prove the taxpayer "attempted in any manner to fraudulently evade or defeat the tax" and fraud is difficult to prove.	When it becomes law and applicable to assessments not barred by the statute of limitations prior to that date.
6.3	Distinguishes between the criminal and civil liability of a responsible person in a business entity. G.S. 105-242.2 provides that each responsible person in a business entity is personally and individually	When it becomes law.

	<p>liable for the principal amount of taxes owed by the business entity. G.S. 105-236.1 provides that certain offenses, such as embezzlement of funds, identity theft, and forgery, are crimes under the jurisdiction of the Department. This section clarifies that the civil tax liability statute has no applicability to the criminal liability of a person.</p> <p>In the past, criminal defendants have argued that the civil liability statute is a bar to a criminal prosecution for a crime. An example of how a defendant would use the statute is as follows: An employee of a company filed fraudulent returns and aided and abetted the business in embezzling sales tax. The employee’s attorney would argue the employee is not an officer, not subject to 105-242.2, and therefore cannot be prosecuted for the crimes. The Department instead focuses on the employee’s conduct and whether it violates the criminal provisions.</p>	
6.4	<p>Conforms the definition of an overdue tax debt to the changes made last session in S.L. 2019-169, and changes the effective date of the provision enacted last session so that the conforming change made in subsection (a) of this section and the changes made last session become effective at the same time.</p> <p>For purposes of collections, there is a tax debt and an overdue tax debt. A tax debt is the amount of tax, penalty, and interest collectible under G.S. 105-241.22. A tax debt that remains unpaid for 90 days becomes an overdue tax debt, and a 20% collection assistance fee is added to the total amount collectible. The proceeds of the fee are Departmental receipts and are applied to the cost of collecting and reducing the incidence of overdue tax debts.</p> <p>Prior to the change made last session, the Department had to send a 30-day fee notice, and the notice could not be mailed until at least 60 days after the tax debt remained unpaid; this timeline coincided with the definition of an overdue tax debt, which is a tax debt that remained unpaid for 90 days. S.L. 2019-169 removed the requirement that the fee notice be sent 60 days after the tax debt remained unpaid, thereby allowing it to be sent with the notice of final assessment. And it allowed the fee to be imposed 60 days after the tax debt became collectible, rather than 90 days. However, the changes made last session did not change the definition of an overdue tax debt. This section provides internal consistency within the statute to accomplish the change intended last session.</p>	August 1, 2020, and applies to tax debts collectible on or after that date.
6.5	<p>Removes the Department of Revenue from the new licensing procedures, data collection, and reporting requirements for State agencies that issue licenses. S.L. 2019-91 made changes to the occupational licensing laws that appear to clarify standards for a licensing board's use of an applicant's criminal history in making licensing determinations.</p>	When it becomes law.

PART VII. EXTEND CERTAIN SUNSETS		
7.1	Extends the sunset for individual taxpayers to donate all or a portion of their State tax refunds to aid in the early detection of breast cancer and cervical cancer to January 1, 2026.	When it becomes law.
7.2	<p>Extends the sunset on the ability of cities to finance certain infrastructure needs through special assessments to July 1, 2025.</p> <p>In 2008, the General Assembly allowed counties and cities to finance certain infrastructure needs through special assessments. The sunsets have been extended several times. Currently, the sunsets are as follows:</p> <ul style="list-style-type: none">• Counties: July 1, 2025 (per S.L. 2019-215)• Counties, dam repair: July 1, 2022• Cities: July 1, 2020 <p>Special assessment district (SAD) financings are rare. Only two towns and one county have used SAD financing since its enactment in 2008. There are no known projects being considered for which this financing is proposed. These bonds are often sold publicly without a rating. The LGC adopted special guidelines for review and approval of these bonds.</p>	When it becomes law.
PART VIII. EFFECTIVE DATE		
8	Except as otherwise provided, this act is effective when it becomes law.	When it becomes law.



NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

Fiscal Analysis Memorandum

CONFIDENTIAL

Requestor: Representative Howard and Senator Newton
Analyst(s): Jonathan Tart, Rodney Bizzell, Denise Canada, Emma Turner
RE: Revenue Laws Recommendations

SUMMARY TABLE

FISCAL IMPACT OF BILL DRAFT Rev Laws, V.4 (\$ in millions)

	<u>FY 2019-20</u>	<u>FY 2020-21</u>	<u>FY 2021-22</u>	<u>FY 2022-23</u>	<u>FY 2023-24</u>
State Impact					
General Fund Revenue	(6.0)	(30.0)	-	-	-
Less Expenditures	-	-	-	-	-
General Fund Impact	(6.0)	(30.0)	-	-	-

FISCAL IMPACT SUMMARY

Part I updates North Carolina's reference to the Internal Revenue Code from January 1, 2019 to May 1, 2020. The fiscal impact results from conforming to a lower threshold amount for the medical expense deduction of 7.5% of income instead of 10% of income for the 2019 and 2020 tax years. The bill decouples from other federal tax provisions that would otherwise have a negative impact on revenue collections.

FISCAL ANALYSIS

The North Carolina Department of Revenue estimates that the total cost of the medical expense itemized deduction under current law (with the 10% threshold) will be \$60.3 million in FY 2019-20 and \$60.5 million in FY 2020-21.

Reducing the threshold to 7.5% is expected to increase the cost of the deduction by approximately \$18 million each tax year. Timing adjustments are made to adjust for the difference between the tax year and the State's fiscal year.

The fiscal impact of reducing the medical expense deduction threshold was estimated using the Fiscal Research Microsimulation Tax Model. The Model uses prior year Federal and North Carolina tax return data that has been "aged" to approximate 2019 and 2020 tax year data.

TECHNICAL CONSIDERATIONS

N/A.

DATA SOURCES

North Carolina Department of Revenue, IRS Statistics of Income, Moody's Analytics Forecasts

FISCAL ANALYSIS MEMORANDUM – PURPOSE AND LIMITATIONS

This document is a fiscal analysis of a bill, draft bill, amendment, committee substitute, or conference committee report that is confidential under Chapter 120 of the General Statutes. The estimates in this analysis are based on the data, assumptions, and methodology described in the Fiscal Analysis section of this document. This document only addresses sections of the bill that have projected direct fiscal impacts on State or local governments and does not address sections that have no projected fiscal impacts. This document is not an official fiscal note. If a formal fiscal note is requested, please email your request to the Fiscal Research Division at FiscalNoteRequests@ncleg.net or call (919) 733-4910.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H/S

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BILL DRAFT 2019-SVfz-15* [v.8]

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/12/2020 5:31:57 PM

Short Title: Various Sales Tax Changes. (Public)

Sponsors: Representative Howard.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS SALES AND USE TAX CHANGES AS RECOMMENDED
3 BY THE REVENUE LAWS STUDY COMMITTEE.
4 The General Assembly of North Carolina enacts:

5
6 **PART I. RELIEF FOR AUCTIONEERS AND ESTATE SALE COMPANIES**

7 **SECTION 1.(a)** G.S. 105-164.13E(a)(7) reads as rewritten:

8 "(7) Any of the following animals:

9 a. Baby chicks and poults sold for commercial poultry or egg
10 production-poults.

11 b. Livestock."

12 **SECTION 1.(b)** G.S. 105-164.3 is amended by adding a new subdivision to read:

13 "(#) Livestock. – Cattle, sheep, goats, swine, horses, or mules."

14 **SECTION 1.(c)** G.S. 105-237.1(a) reads as rewritten:

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

18 ...

19 (9) The taxpayer is an auctioneer licensed under Chapter 85B of the General
20 Statutes, and the assessment is for sales tax that the taxpayer failed to collect
21 for the sale of livestock at auction. The Secretary must determine that the
22 taxpayer has made a good-faith effort to comply with the tax laws, including
23 being registered as a retailer on or before July 1, 2020. This subdivision
24 applies to assessments for any tax due for a reporting period ending prior to
25 July 1, 2020. This subdivision does not apply if the person received specific
26 written advice from the Secretary for the transactions at issue for the laws in
27 effect for the applicable period or for tax collected and not remitted to the
28 Department."

29 **SECTION 1.(d)** G.S. 105-164.4J is amended by adding a new subsection to read:

30 "(j) Grace Period. – The Department shall take no action to assess any tax due for a filing
31 period beginning on or after February 1, 2020, and ending prior to October 1, 2020, if a person
32 conducted a sale of tangible personal property on behalf of the owner of the tangible personal
33 property for which the person was compensated, the sale was conducted at the owner's home or



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1 farm, and regardless of whether the sale was conducted by auction or through the pricing of items.

2 This subsection does not apply in any of the following circumstances:

3 (1) The person received specific written advice from the Secretary for the
4 transactions at issue for the laws in effect for the applicable period.

5 (2) The person collected tax and failed to remit it to the Department."

6 **SECTION 1.(e)** Subsections (a) and (b) of this section become effective July 1, 2020,
7 and apply to sales occurring on or after that date. The remainder of this section is effective when
8 it becomes law.

10 **PART II. EXPANSION OF LARGE FULFILLMENT FACILITY EXEMPTION**

11 **SECTION 2.(a)** G.S. 105-164.13(5o) reads as rewritten:

12 "(5o) Sales of equipment, or an accessory, an attachment, or a repair part for
13 equipment, that meets all of the following requirements:

14 a. Is sold to a large fulfillment ~~facility~~-facility or to a contractor or
15 subcontractor if the purchase is for use in the performance of a contract
16 with the large fulfillment facility.

17 b. Is used at the facility for any of the following purposes:

18 1. ~~in~~-In the distribution process, which includes receiving,
19 inventorying, sorting, repackaging, or distributing finished
20 retail products.

21 2. Baling previously used packaging for resale, sanitizing
22 required by federal law, or material handling.

23 c. Is not electricity.

24 If the level of investment or employment required by G.S. 105-164.3(97)b. is
25 not timely made, achieved, or maintained, then the exemption provided under
26 this subdivision is forfeited. If the exemption is forfeited due to a failure to
27 timely make the required investment or to timely achieve the minimum
28 required employment level, then the exemption provided under this
29 subdivision is forfeited on all purchases. If the exemption is forfeited due to a
30 failure to maintain the minimum required employment level once that level
31 has been achieved, then the exemption provided under this subdivision is
32 forfeited for those purchases occurring on or after the date the taxpayer fails
33 to maintain the minimum required employment level. A taxpayer that forfeits
34 an exemption under this subdivision is liable for all past sales and use taxes
35 avoided as a result of the forfeiture, computed at the applicable State and local
36 rates from the date the taxes would otherwise have been due, plus interest at
37 the rate established under G.S. 105-241.21. Interest is computed from the date
38 the sales or use tax would otherwise have been due. The past taxes and interest
39 are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past
40 taxes and interest by the due date is subject to the provisions of G.S. 105-236."

41 **SECTION 2.(b)** Refund. – An eligible taxpayer is allowed a refund of all State and
42 local sales and use taxes paid on eligible purchases in accordance with this subsection. The
43 following definitions apply in this subsection:

44 (1) Eligible taxpayer. – A large fulfillment facility with respect to eligible
45 purchases made by the large fulfillment facility, or a contractor or
46 subcontractor with respect to eligible purchases made by the contractor or
47 subcontractor on behalf of a large fulfillment facility.

48 (2) Eligible purchase. – The purchase of an item eligible for exemption under
49 G.S. 105-164.13(5o), as amended by this section, if the purchase was made
50 on or after April 1, 2020, but before July 1, 2020.

1 A request for a refund under this section must be in writing and must include any information
2 and documentation required by the Secretary. A request for a refund under this subsection must
3 be made on or after July 1, 2020, and is due before October 1, 2020. Refunds applied for after
4 the due date are barred taxes for which a refund is allowed under this section are not an
5 overpayment of tax and do not accrue interest as provided in G.S. 105-241.21.

6 **SECTION 2.(c)** Subsection (a) of this section becomes effective July 1, 2020, and
7 applies to sales occurring on or after that date. The remainder of this section is effective when it
8 becomes law.

9
10 **PART III. CLARIFY DIGITAL PROPERTY/ONLINE LEARNING**

11 **SECTION 3.(a)** G.S. 105-164.3, as amended by Section 1 of this act, reads as
12 rewritten:

13 **"§ 105-164.3. Definitions.**

14 The following definitions apply in this Article:

15 ...

16 (#) Additional digital goods. – All of the following if transferred electronically:

17 a. A magazine, a newspaper, a newsletter, a report, or another
18 publication.

19 b. A photograph.

20 c. A greeting card.

21 ...

22 (7) Digital audio ~~Audio~~-work. – A series of musical, spoken, or other sounds,
23 including a ~~ringtone~~-ringtone, that is transferred electronically.

24 (9) Digital audiovisual ~~Audiovisual~~-work. – A series of related ~~images~~-images,
25 that when shown in succession, and any sounds accompanying the images that
26 impart an impression of ~~motion when shown in succession~~-motion, together
27 with accompanying sounds, if any, and that is transferred electronically.

28 (#) Digital book. – A work that is generally recognized in the ordinary and usual
29 sense as a book that is transferred electronically.

30 ...

31 (23) Certain digital property. – ~~An item listed in this subdivision that is delivered~~
32 ~~or accessed electronically and that is not considered tangible personal~~
33 ~~property.~~ Specified digital products and additional digital goods. The term
34 does not include an information ~~service~~-service or an educational service. ~~The~~
35 items are:

36 a. An audio work.

37 b. An audiovisual work.

38 e. A book, magazine, a newspaper, a newsletter, a report, or another
39 publication.

40 d. A photograph or a greeting card.

41 ...

42 (58) Educational service. – The delivery of instruction or training, whether
43 provided in real-time, on-demand, or at another set time, by or on behalf of a
44 qualifying educational entity where at least one of the following conditions
45 applies:

46 a. The instruction or training is part of the curriculum for an enrolled
47 student.

48 b. The instruction or training is encompassed within the institution's
49 accreditation or prepares an enrolled student for gainful employment
50 in a recognized occupation.

- c. The participant is evaluated by an instructor. "Evaluated by an instructor" does not include being graded by, scored by, or evaluated by a computer program or an interactive, automated method.
- d. The participant is connected to the presenter or instructor via the Internet or other networks, allowing the participant to provide, receive, or discuss information through live interaction, contemporaneous with the presentation.

...

(170) Qualifying educational entity. – An entity listed in this subdivision. For purposes of this definition, references to the United States Code mean the United States Code as enacted as of January 1, 2020. The entities are:

- a. An elementary or secondary school, as defined in 20 U.S.C. § 7801.
- b. An institution of higher education, as defined in 20 U.S.C. § 1002.

...

(#) Specified digital products. – Digital audio works, digital audiovisual works, and digital books.

...."

SECTION 3.(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:

...

(72) Sales of a digital audio work or a digital audiovisual work that is a qualifying education expense under G.S. 115C-595(a)(3) to the operator of a home school as defined in G.S. 115C-563.

(73) Sales of a digital audio work or digital audiovisual work that consists of nontaxable service content when the electronic transfer of the digital audio work or digital audiovisual work occurs contemporaneously with the provision of the nontaxable service in real-time.

SECTION 3.(c) The Revisor of Statutes is authorized to renumber the subdivisions of G.S. 105-164.3 to ensure that the subdivisions are listed in alphabetical order and in a manner that reduces the current use of alphanumeric designations, to make conforming changes, and to reserve sufficient space to accommodate future additions to the statutory section.

SECTION 3.(d) This section is effective retroactively to October 1, 2019, and applies to sales occurring on or after that date.

EFFECTIVE DATE

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.



Bill Draft 2019-SVfz-15: Various Sales Tax Changes.

2019-2020 General Assembly

Committee: Revenue Laws Study Committee	Date: May 13, 2020
Introduced by:	Prepared by: Trina Griffin
Analysis of: 2019-SVfz-15	Staff Attorney

OVERVIEW: *This bill draft has three parts consisting of various sales and use tax changes:*

- **Part I** – Provides some relief to auctioneers and estate sale companies in light of recent law changes.
- **Part II** – Expands the scope of the sales and use tax exemption for equipment purchased by a large fulfillment facility.
- **Part III** – Makes the following changes with respect to the sales tax on digital property:
 - Clarifies that the provision of an "educational service" by certain institutions, regardless of whether all or a portion of the instruction is delivered through an online class, whether live or recorded, is not a taxable event.
 - Exempts sales of digital audio works and digital audiovisual works that qualify as an educational expense when purchased by the operator of a homeschool.
 - Exempts sales of digital audio works and digital audiovisual works that consist of nontaxable service content when the transfer occurs contemporaneously with the provision of the nontaxable service in real-time.

PART I: AUCTIONEERS AND ESTATE SALES

CURRENT LAW & BACKGROUND: Auctioneers who buy or acquire tangible personal property by consignment or otherwise that they sell at retail must register with the Department of Revenue and collect and remit sales tax on the sales. This longstanding principle has remained unchanged for many years, but the passage of the marketplace facilitator provision has resulted in a re-examination of some aspects of this industry. As the Department sought to notify and educate the auctioneer industry about recent law changes, it became apparent that there is some inconsistency among auctioneers with respect to understanding their sales tax collection obligations. One area of confusion relates to the auctioning of livestock. While there is a sales tax exemption for "products of the farm," the exemption only applies if the *seller* of the farm products, which includes animals, is the producer – meaning the farmer. Those same farm products sold by an auctioneer are subject to tax. Another exemption that comes into play is when the *purchaser* is a qualifying farmer. If the purchaser meets the definition of a qualifying farmer and presents an exemption certificate at purchase, then the auctioneer is not required to collect tax, but the only animals exempt in this situation are baby chicks and poults. These exemptions may account for some of the inconsistency or confusion within the industry.

Another reason for the lack of clarity among auctioneers may be attributable to a Departmental interpretation from the early 1990s providing that an auctioneer is not liable for collecting and remitting sales tax when tangible personal property is sold for the owner at the owner's location. The Department

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

Draft

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has previously opined that, in this circumstance, the auctioneer is acting as an agent for the owner of the property and, therefore, steps into the shoes of the owner who would otherwise not have to collect sales tax on the casual and isolated sale of the owner's household possessions. Moreover, when an auctioneer conducts a sale on the owner's property, he never takes possession of the goods. This exemption does not apply, however, when a retail or wholesale business conducts a "going out of business" auction.

Against this backdrop, the General Assembly passed the marketplace facilitator provision in November 2019, with a February 1, 2020, effective date. The marketplace facilitator provision, by its very terms, makes a person who sells a third-party seller's items through a forum or marketplace operated by that person and who collects payment for those goods, a retailer required to collect sales tax. This effectively made certain auctioneers or operators of estate sales, retailers who are required to collect sales tax. Because the focus of the marketplace facilitator provision was primarily large online retailers who conduct third party sales, like Amazon, eBay, and Etsy, there was little discussion about the impact on the auctioneer/estate sale industry, and business owners who previously were not required to collect sales tax had a short period of time to come into compliance.

BILL ANALYSIS: Part I of the bill does three things:

- It expands the sales tax exemption with respect to the purchase of certain animals by qualifying farmers to include livestock. "Livestock" is defined to mean cattle, sheep, goats, swine, horses, and mules. The current exemption applies only to baby chicks and poults.
- It authorizes the Secretary of Revenue to compromise the liability of an auctioneer with respect to the sale of livestock at auction for which the auctioneer failed to collect sales tax if the taxpayer can demonstrate a good faith effort to comply with the tax laws, which would include being registered as a retailer by July 1, 2020. This ability to compromise liability would apply only to tax due for a reporting period ending prior to July 1, 2020. This provision recognizes that there may have been some confusion or lack of clarity in the auctioneer industry with respect to sales tax collection obligations and gives the Secretary flexibility in the event an auctioneer is assessed for failure to collect. However, by no later than April 1, 2020, all auctioneers will have been notified by the Department, through both email and regular mail, as to their registration and collection obligations.
- It provides a five-month grace period to businesses that conduct tag sales or estate sales at either a person's home or farm without risk of assessment by the Department for failure to collect tax. The intent is to afford these businesses who previously did not have to collect tax with additional time to come into compliance with the marketplace facilitator provision that became effective February 1, 2020.

EFFECTIVE DATE: The expansion of the sales tax exemption for qualifying farmers who purchase livestock becomes effective July 1, 2020, and applies to sales occurring on or after that date. The remainder of the changes are effective when they become law.

PART II: LARGE FULFILLMENT FACILITIES

CURRENT LAW AND BACKGROUND: In 2017, the General Assembly enacted a sales and use tax exemption for certain equipment purchased by a "large fulfillment facility." A large fulfillment facility is a facility used primarily for receiving, inventorying, sorting, repackaging, and distributing finished retail products for the purpose of fulfilling customer orders.

To qualify, the facility must invest at least \$100 million in real and tangible personal property within five years of the first property investment, as certified by the Department of Commerce, and must maintain an

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employment level of 400 people. There is a forfeiture provision in the event the employment level at the facility drops below 400.

Examples of equipment used in the distribution process would include automated storage and retrieval systems, conveyor and sortation systems, storage systems, racking and mezzanine systems, automated packaging systems, labeling and scanning equipment, and forklifts and other powered equipment.

At the time the legislation was being considered, the types of businesses that were considered to be the primary beneficiaries of the exemption were businesses like Amazon or Walmart. However, there are other types of fulfillment facilities. One example would be Publix, which is in the process of building a distribution center in Greensboro and that will fulfill orders for their various grocery stores. The existing exemption would not cover some types of equipment used at its fulfillment center.

BILL ANALYSIS: Part II of the bill would expand the sales tax exemption for equipment, accessories, attachments, and repair parts purchased by a large fulfillment facility to include the following:

- When these items are purchased by a contractor or subcontractor if the purchase is for use in the performance of a contract with the facility.
- Equipment used for baling previously used packaging for resale, sanitizing as required by federal law, and material handling.

This Part also provides a limited refund provision in the event a large fulfillment facility, or a contractor on the facility's behalf, makes purchases of this equipment prior to July 1, 2020, when the exemption would become effective.

EFFECTIVE DATE: This part of the bill becomes effective July 1, 2020, and applies to sales occurring on or after that date.

PART III: CLARIFY DIGITAL PROPERTY/ONLINE LEARNING

CURRENT LAW: North Carolina taxes the sale of the following digital property that is accessed or delivered electronically:

- Audio work – A series of musical, spoken, or other sounds, including a ringtone.
- Audiovisual work – A series of related images and any sounds accompanying the images that impart an impression of motion when shown in succession.
- A book, magazine, newspaper, newsletter, report, or another publication.
- Photograph or greeting card
- Digital codes used to purchase any of the above products.

BACKGROUND: Last year, the General Assembly made a change with respect to the taxation of digital property by removing language in the statute that said, in order for digital property to be taxable, the item "*would be taxable...if sold in a tangible medium.*" This change arose from a private letter ruling (PLR) request received by DOR in 2011. The taxpayer provided access to an online video catalog of continuing education courses for which users could take an exam at the conclusion of the course and receive a completion certificate. Because the taxpayer did not provide a tangible version of these videos, the Department concluded the videos were not taxable.

However, the outcome of this PLR was inconsistent with the plain meaning and intent of the statutory language. Because the statute stated that these items were taxable to the extent they "*would be taxable...if sold in a tangible medium,*" there was no requirement that the digital item actually exist in a tangible form.

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[Section 3.1\(b\) of S.L. 2019-169](#) deleted the phrase from the statute and had the effect of taxing the types of videos mentioned in the PLR, effective October 1, 2019, because they are not unlike any other video sold in a tangible format, which is taxable.

After this change was made, UNC inquired whether it was intended to have any impact on their online classes since, from a definitional standpoint, the terms "audio work" and "audiovisual work" could technically be interpreted to include live-streamed or pre-recorded videos of online classes and presentations. The change made in S.L. 2019-169 was not intended to tax online classes provided to enrolled students by educational institutions. In this context, the "transaction" is the provision of education, which North Carolina does not tax, rather than the sale of a digital good.

While it seems relatively clear that a "traditional" online class offered in an academic or vocational context is more like education and less like the sale of a digital good, that line is not always clear given the complexities and varieties of digital offerings. It is becoming more and more common for digital property to be used as the method for transmitting or conveying the performance of a service. For example, an exercise class, a music lesson, or a financial planning consultation may all be conducted via a live "Zoom" or other streaming platform. Technically, a "Zoom" meets the definition of a "digital audiovisual work," but in this context, the primary purpose or essence of the transaction is the performance of the service; the format is incidental. Moreover, North Carolina doesn't currently tax those services and federal law precludes taxing the digital or online version of the same "in-person" transaction. However, once that content is recorded and sold in a format that a person can watch whenever and as often as they'd like, it becomes a digital good or product, which North Carolina has traditionally taxed.

BILL ANALYSIS: Part III of the bill does the following:

- Clarifies that the delivery of instruction or training by a public or private K-12 school or an institution of higher education, which includes public and private universities and colleges, community colleges, proprietary schools, and religious schools, to an enrolled student or as part of vocational training, regardless of whether it is conducted online in a live or pre-recorded format, is a nontaxable "educational service" and is not the sale of digital property.
- Exempts sales of audio works or audiovisual works to operators of home schools if the work is a qualifying educational expense under G.S. 115C-595(a)(3).
- Exempts sales of digital audio works or digital audiovisual works that consist of nontaxable service content when the transfer occurs contemporaneously and in real-time with the provision of the nontaxable service. Examples would include an exercise class, a music lesson, or a financial planning seminar live-streamed via Zoom. However, pre-recorded or on-demand webinars would be taxable like any other video.

EFFECTIVE DATE: This bill is effective retroactively to October 1, 2019, to align with the effective date of the digital property change in S.L. 2019-169.



NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

Fiscal Analysis Memorandum

CONFIDENTIAL

Requestor: Rep. Howard and Sen. Newton
Analyst(s): Denise Canada
RE: Various Sales Tax Changes

SUMMARY TABLE

FISCAL IMPACT OF Revenue Laws Bill Draft 2019-SVfz-15* [v.8]

	<u>FY 2020-21</u>	<u>FY 2021-22</u>	<u>FY 2022-23</u>	<u>FY 2023-24</u>	<u>FY 2024-25</u>
State Impact					
General Fund Revenue	-	-	-	-	-
Less Expenditures	-	-	-	-	-
General Fund Impact	Likely Insignificant Revenue Loss - Refer to Fiscal Analysis section				

NET STATE IMPACT

Local Impact

Local Revenue	-	-	-	-	-
Less Local Expenditures	-	-	-	-	-
	Likely Insignificant Revenue Loss - Refer to Fiscal Analysis section				

NET LOCAL IMPACT

FISCAL IMPACT SUMMARY

The bill changes the State's sales and use tax law regarding 1) Auctioneers and estate sales, 2) digital property, and 3) equipment purchases. Each change is expected to reduce State and local sales tax revenue by an unknown but likely insignificant amount.

FISCAL ANALYSIS

Auctioneers and Estate Sale Companies

The changes to the taxation of sales conducted by auctioneers and estate sales are expected to reduce State and local tax revenue, but by an unknown amount. Similarly, the taxation grace

period provided by Section 1.(d) of the bill will reduce State and local tax revenue, but by an unknown amount.

No estimate is available because staff cannot predict how many taxpayers might be eligible for either the grace period or the new livestock exemption or the volume of sales that might qualify for the exemption.

Digital Property

The bill makes clarifications to the existing taxation of digital property that should have no effect on tax collections. However, it also expands the State's sales and use tax exemptions for sales of certain digital items, a change which will reduce both State and local tax revenue. However, the digital economy is difficult to quantify, and the North Carolina Department of Revenue does not collect data from retailers on the amount of tax remitted from sales of the digital items in question. Consequently, no estimate is available.

Equipment Purchased by a Large Fulfillment Facility

Under North Carolina tax law, sales of tangible personal property are subject to sales or use taxes unless the tangible personal property is specifically exempted from tax in statute. However, G.S. 105-164.13.5(o) provides the following exemption conditional on certain economic investment and employment thresholds being met by the taxpayer:

Sales of equipment, or an accessory, an attachment, or a repair part for equipment, that:

- a. Is sold to a large fulfillment facility.
- b. Is used at the facility in the distribution process, which includes receiving, inventorying, sorting, repackaging, or distributing finished retail products and
- c. Is not electricity.

The bill draft expands this exemption as of July 1, 2020 for instances when the items listed above are purchased by a contractor or subcontractor if the purchase is for use in the performance of a contract with a qualifying facility and also expands the exemption to apply to equipment used for baling previously-used packaging for resale, sanitizing as required by federal law, and material handling.

Expanding the sales tax exemption will reduce both State and local government sales tax revenue, but it is impossible to predict how many companies might take advantage of this preferential tax treatment in their purchases of eligible equipment or what the total sales price for eligible equipment might be. The impact on total State and local tax collections is expected to be minimal.

TECHNICAL CONSIDERATIONS

N/A.

DATA SOURCES

North Carolina Department of Revenue.

FISCAL ANALYSIS MEMORANDUM – PURPOSE AND LIMITATIONS

This document is a fiscal analysis of a bill, draft bill, amendment, committee substitute, or conference committee report that is confidential under Chapter 120 of the General Statutes. The estimates in this analysis are based on the data, assumptions, and methodology described in the Fiscal Analysis section of this document. This document only addresses sections of the bill that have projected direct fiscal impacts on State or local governments and does not address sections that have no projected fiscal impacts. This document is not an official fiscal note. If a formal fiscal note is requested, please email your request to the Fiscal Research Division at FiscalNoteRequests@ncleg.net or call (919) 733-4910.



**AUTHORIZING LEGISLATION ARTICLE 12L
OF CHAPTER 120 OF THE GENERAL
STATUTES**

Article 12L.
Revenue Laws Study Committee.

§ 120-70.105. Creation and membership of the Revenue Laws Study Committee.

(a) Membership. – The Revenue Laws Study Committee is established. The Committee consists of 20 members as follows:

- (1) Ten members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.
- (2) Ten members appointed by the Speaker of the House of Representatives; the persons appointed may be members of the House of Representatives or public members.

(b) Terms. – Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Legislative members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1997-483, s. 14.1; 1998-98, s. 39; 2009-574, s. 51.1.)

§ 120-70.106. Purpose and powers of Committee.

(a) The Revenue Laws Study Committee may:

- (1) Study the revenue laws of North Carolina and the administration of those laws.
- (2) Review the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, easy to administer, and equitable.
- (3) Call upon the Department of Revenue to cooperate with it in the study of the revenue laws.
- (4) Report to the General Assembly at the beginning of each regular session concerning its determinations of needed changes in the State's revenue laws.

These powers, which are enumerated by way of illustration, shall be liberally construed to provide for the maximum review by the Committee of all revenue law matters in this State.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. When a recommendation of the Committee, if enacted, would result in an increase or decrease in State revenues, the report of the Committee must include an estimate of the amount of the increase or decrease.

(c) The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66 of the General Statutes, as enacted by S.L. 2006-151, has on the issues listed in this section to determine if any changes to the law are needed:

- (1) Competition in video programming services.

- (2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.
- (3) The deployment of broadband in the State.

The Committee must review the impact of this Article on these issues every two years and report its findings to the North Carolina General Assembly. The Committee must make its first report to the 2008 Session of the North Carolina General Assembly.

(d) **(Effective July 1, 2019 until July 1, 2020)** An establishment to which permits may be issued pursuant to G.S. 18B-1006(n1), as enacted by S.L. 2016-23, is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution, and the motor fuel sold by that establishment is taxable in accordance with this subsection. Notwithstanding G.S. 105-449.80, the motor fuel excise tax rate for an establishment to which permits may be issued pursuant to G.S. 18B-1006(n1), as enacted by S.L. 2016-23, is twenty-two cents (22¢) per gallon. The Revenue Laws Study Committee shall annually compare the motor fuel excise tax rate imposed by this subsection with the rate levied by the State of South Carolina on motor fuels and may recommend a change in the rate imposed by this subsection to an amount no greater than the rate then in effect for the State of South Carolina. An establishment designated as a special class of property by this subsection may obtain monthly refunds on the difference between the motor fuel excise tax imposed under G.S. 105-449.80 and the motor fuel excise tax imposed by this subsection. The Department of Revenue shall calculate for each calendar year the difference between the motor fuel excise tax that would have been imposed under G.S. 105-449.80 on the motor fuel sold by an establishment classified by this subsection in the absence of this classification and the motor fuel excise tax that was imposed on the motor fuel sold by the establishment due to the classification. The difference in taxes, together with any interest, penalties, or costs that may accrue thereon, are a lien on the real property underlying the establishment as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the records of the Department as deferred taxes. The deferred taxes for the preceding three calendar years are due and payable on the day this subsection becomes ineffective due to the occurrence of a disqualifying event; provided, however, the amount collected for deferred taxes pursuant to this subsection does not exceed the tax value of the property. A disqualifying event occurs when the title to the real property underlying the establishment is transferred to a new owner. A lien for deferred taxes is extinguished when the amount required by this subsection is paid.

(d) **(Effective July 1, 2020 until July 1, 2021)** An establishment to which permits may be issued pursuant to G.S. 18B-1006(n1), as enacted by S.L. 2016-23, is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution, and the motor fuel sold by that establishment is taxable in accordance with this subsection. Notwithstanding G.S. 105-449.80, the motor fuel excise tax rate for an establishment to which permits may be issued pursuant to G.S. 18B-1006(n1), as enacted by S.L. 2016-23, is twenty-four cents (24¢) per gallon. The Revenue Laws Study Committee shall annually compare the motor fuel excise tax rate imposed by this subsection with the rate levied by the State of South Carolina on motor fuels and may recommend a change in the rate imposed by this subsection to an amount no greater than the rate then in effect for the State of South Carolina. An establishment designated as a special class of property by this subsection may obtain monthly refunds on the difference between the motor fuel excise tax imposed under G.S. 105-449.80 and the motor fuel excise tax imposed by this subsection.

The Department of Revenue shall calculate for each calendar year the difference between the motor fuel excise tax that would have been imposed under G.S. 105-449.80 on the motor fuel sold by an establishment classified by this subsection in the absence of this classification and the motor fuel excise tax that was imposed on the motor fuel sold by the establishment due to the classification. The difference in taxes, together with any interest, penalties, or costs that may accrue thereon, are a lien on the real property underlying the establishment as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the records of the Department as deferred taxes. The deferred taxes for the preceding three calendar years are due and payable on the day this subsection becomes ineffective due to the occurrence of a disqualifying event; provided, however, the amount collected for deferred taxes pursuant to this subsection does not exceed the tax value of the property. A disqualifying event occurs when the title to the real property underlying the establishment is transferred to a new owner. A lien for deferred taxes is extinguished when the amount required by this subsection is paid.

(d) **(Effective July 1, 2021 until July 1, 2022)** An establishment to which permits may be issued pursuant to G.S. 18B-1006(n1), as enacted by S.L. 2016-23, is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution, and the motor fuel sold by that establishment is taxable in accordance with this subsection. Notwithstanding G.S. 105-449.80, the motor fuel excise tax rate for an establishment to which permits may be issued pursuant to G.S. 18B-1006(n1), as enacted by S.L. 2016-23, is twenty-six cents (26¢) per gallon. The Revenue Laws Study Committee shall annually compare the motor fuel excise tax rate imposed by this subsection with the rate levied by the State of South Carolina on motor fuels and may recommend a change in the rate imposed by this subsection to an amount no greater than the rate then in effect for the State of South Carolina. An establishment designated as a special class of property by this subsection may obtain monthly refunds on the difference between the motor fuel excise tax imposed under G.S. 105-449.80 and the motor fuel excise tax imposed by this subsection. The Department of Revenue shall calculate for each calendar year the difference between the motor fuel excise tax that would have been imposed under G.S. 105-449.80 on the motor fuel sold by an establishment classified by this subsection in the absence of this classification and the motor fuel excise tax that was imposed on the motor fuel sold by the establishment due to the classification. The difference in taxes, together with any interest, penalties, or costs that may accrue thereon, are a lien on the real property underlying the establishment as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the records of the Department as deferred taxes. The deferred taxes for the preceding three calendar years are due and payable on the day this subsection becomes ineffective due to the occurrence of a disqualifying event; provided, however, the amount collected for deferred taxes pursuant to this subsection does not exceed the tax value of the property. A disqualifying event occurs when the title to the real property underlying the establishment is transferred to a new owner. A lien for deferred taxes is extinguished when the amount required by this subsection is paid.

(d) **(Effective July 1, 2022)** An establishment to which permits may be issued pursuant to G.S. 18B-1006(n1), as enacted by S.L. 2016-23, is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution, and the motor fuel sold by that establishment is taxable in accordance with this subsection. Notwithstanding G.S. 105-449.80, the motor fuel excise tax rate for an establishment to

which permits may be issued pursuant to G.S. 18B-1006(n1), as enacted by S.L. 2016-23, is twenty-eight cents (28¢) per gallon. The Revenue Laws Study Committee shall annually compare the motor fuel excise tax rate imposed by this subsection with the rate levied by the State of South Carolina on motor fuels and may recommend a change in the rate imposed by this subsection to an amount no greater than the rate then in effect for the State of South Carolina. An establishment designated as a special class of property by this subsection may obtain monthly refunds on the difference between the motor fuel excise tax imposed under G.S. 105-449.80 and the motor fuel excise tax imposed by this subsection. The Department of Revenue shall calculate for each calendar year the difference between the motor fuel excise tax that would have been imposed under G.S. 105-449.80 on the motor fuel sold by an establishment classified by this subsection in the absence of this classification and the motor fuel excise tax that was imposed on the motor fuel sold by the establishment due to the classification. The difference in taxes, together with any interest, penalties, or costs that may accrue thereon, are a lien on the real property underlying the establishment as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the records of the Department as deferred taxes. The deferred taxes for the preceding three calendar years are due and payable on the day this subsection becomes ineffective due to the occurrence of a disqualifying event; provided, however, the amount collected for deferred taxes pursuant to this subsection does not exceed the tax value of the property. A disqualifying event occurs when the title to the real property underlying the establishment is transferred to a new owner. A lien for deferred taxes is extinguished when the amount required by this subsection is paid. (1997-483, s. 14.1; 2006-151, s. 21; 2016-23, s. 2(b); 2017-102, s. 19.1; 2018-5, s. 38.6(g)-(l).)

§ 120-70.107. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Revenue Laws Study Committee. The Committee shall meet upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) The Committee shall be funded by the Legislative Services Commission from appropriations made to the General Assembly for that purpose. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1 and G.S. 138-5. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (1997-483, s. 14.1.)

MEETING AGENDAS

ALL MATERIALS DISTRIBUTED AT MEETINGS MAY BE
VIEWED ON THE COMMITTEE'S WEBSITE:

<https://www.ncleg.gov/Committees>

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. Paul Newton

Rep. Julia Howard

*January 29, 2020
Room 1228 Legislative Building
9:30 a.m.*

- I. Welcome and Introductions**
- II. State and Local Revenue Overview**
Emma Turner, Fiscal Research Division, NC General Assembly
- III. State and Local Sales Tax Overview**
Denise Canada, Fiscal Research Division, NC General Assembly
- IV. Finance Changes 2019**
Nick Giddings, Legislative Analysis Division, NC General Assembly
- V. IRC Update and Draft Proposal**
*Jonathan Tart, Fiscal Research Division, NC General Assembly
Cindy Avrette, Legislative Analysis Division, NC General Assembly*
- VI. Kaestner Overview**
Greg Roney, Legislative Analysis Division, NC General Assembly
- VII. Adjournment**

*Next Meeting Date: Wednesday, February 12, 2020
In Room 1228, LB, at 9:30 a.m.*

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. Paul Newton

Rep. Julia Howard

*February 12, 2020
Room 1228 Legislative Building
9:30 a.m.*

- I. Welcome and Approval of Minutes from the January 29, 2020, Meeting**
- II. Committee Recommendation on Draft Proposal: IRC Update**
- III. Digital Property Tax & Online Learning**
Trina Griffin, Legislative Analysis Division
- IV. Local Option Sales Tax (LOST) Issues**
 - **Modernizing the State's Local Sales Tax Distributions**
Denise Canada, Fiscal Research Division
Ernest Irving, Department of Revenue
 - **LOST Flexibility**
Trina Griffin, Legislative Analysis Division
- V. Draft Proposal: Technical, Clarifying, and Administrative Changes, Part I**
Cindy Avrette, Legislative Analysis Division
- VI. Adjournment**

*Next Meeting Date: Wednesday, March 11, 2020
In Room 1228, LB, at 9:30 a.m.*

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. Paul Newton

Rep. Julia Howard

*March 11, 2020
Room 1228 Legislative Building
9:30 a.m.*

- I. Welcome and Approval of Minutes from the February 12, 2020, Meeting**
- II. Follow up to Modernizing the State's Local Sales Tax Distributions**
*Denise Canada, Fiscal Research Division
Ernest Irving, Department of Revenue*
- III. Draft Proposal: Clarify Taxability of Online Educational Materials**
Trina Griffin, Legislative Analysis Division
- IV. Review of Expiring Tax- and Finance-Related Provisions**
Cindy Avrette, Legislative Analysis Division
- V. Draft Proposal: Revenue Laws Technical, Clarifying, and Administrative Changes - Part II**
*Cindy Avrette, Legislative Analysis Division
Trina Griffin, Legislative Analysis Division*
- VI. Draft Proposal: Various Sales Tax Changes**
Trina Griffin, Legislative Analysis Division
- VII. Adjournment**

*Next Meeting Date: April 15, 2020
In Room 1228, LB, at 9:30 a.m.*

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. Paul Newton

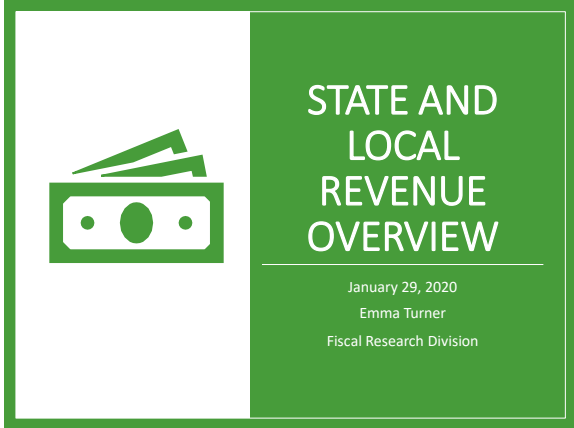
Rep. Julia Howard

*May 13, 2020
Room 1228 Legislative Building
10:00 a.m.*

- I. Welcome and Approval of Minutes from the March 11, 2020, Meeting**
- II. Legislative Proposal #2: Various Sales Tax Changes**
*Trina Griffin, Legislative Analysis Division
Denise Canada, Fiscal Research Division*
The Committee began discussion of this bill draft at its March meeting. The bill draft has been revised.
- III. Legislative Proposal #1: Revenue Laws Recommendations**
*Cindy Avrette, Legislative Analysis Division
Jonathan Tart, Fiscal Research Division*
The bill draft incorporates the following:
- *Consideration of tax changes enacted in the CARES act on March 27, 2020 (new)*
 - *IRC bill draft discussed at February and March meetings*
 - *Two technical and clarifying bill drafts discussed at the February and March meetings*
- Extension of two sunset provisions discussed at the March meeting*
- IV. Adoption of Report to the 2020 Regular Session of the 2019-2020 General Assembly**
- V. Adjournment**

SUPPORTING DOCUMENTATION

1. STATE AND LOCAL REVENUE OVERVIEW, Emma Turner, Fiscal Research Division, January 29, 2020
2. OVERVIEW OF STATE AND LOCAL SALES TAX, Denise Canada, Fiscal Research Division, January 29, 2020
3. TAX ACTIONS FROM THE 2019 LEGISLATIVE SESSION, Nick Giddings, Legislative Analysis Division, January 29, 2020
4. OVERVIEW OF US SUPREME COURT DECISION IN KAESTNER, Greg Roney, Legislative Analysis Division, January 29, 2020
5. DIGITAL PROPERTY TAX AND ONLINE LEARNING, Trina Griffin, Legislative Analysis Division, February 12, 2020
6. MODERNIZING THE STATE'S LOCAL SALES TAX DISTRIBUTIONS, Ernest Irving, Department of Revenue, Denise Canada, Fiscal Research Division, February 12, 2020
7. MODERNIZING THE STATE'S LOCAL SALES TAX DISTRIBUTIONS: COUNTY ESTIMATES follow-up, Ernest Irving, Department of Revenue, Denise Canada, Fiscal Research Division, March 11, 2020
8. LOCAL OPTION SALES TAX FLEXIBILITY, Trina Griffin, Legislative Analysis Division, February 12, 2020
9. TAX AND FINANCE PROVISIONS WITH SUNSETS, Cindy Avrette, Legislative Analysis Division, March 11, 2020



1

Sources of State and Local Revenue

STATE REVENUE

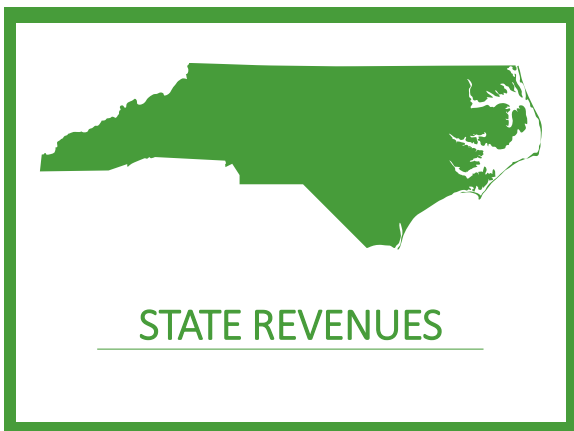
- Transportation Funds
 - Highway Use Tax
 - Motor Fuels Tax
 - Non-Tax Revenue
- General Fund
 - Personal Income Tax
 - Corporate Income Tax & Franchise Tax
 - State Sales & Use Tax
 - Other Taxes
 - Non-Tax Revenue

LOCAL REVENUE

- Property Taxes
- Local Option Sales & Use Tax
- Other Taxes
- Non-Tax Revenue

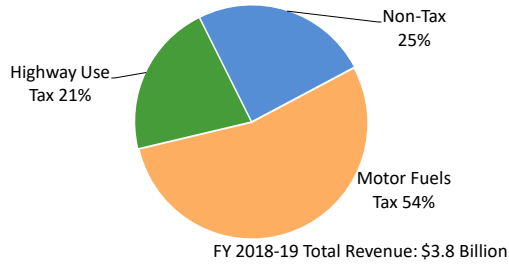


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State Transportation Revenue by Source



Source: North Carolina Department of Transportation 4

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Transportation Funds: Taxes



Motor Fuel Tax
36.1¢/gallon

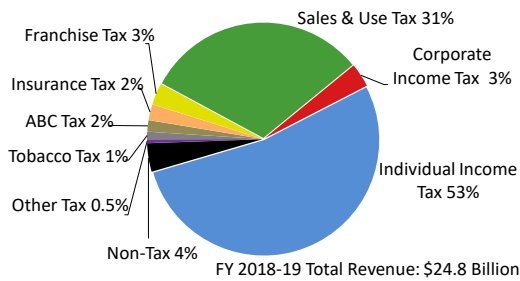


Highway Use Tax
3% tax on retail value of vehicle assessed each time a title is transferred

5

5

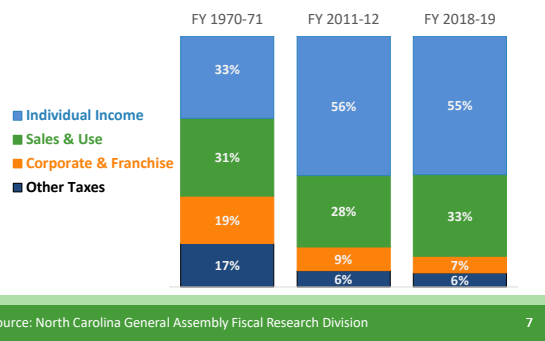
General Fund Revenue by Source



Source: North Carolina General Assembly Fiscal Research Division 6

6

North Carolina's Changing Tax Structure



7

Fiscal Impact Of 2019 Session Tax Changes

Fiscal Year	FY 2019-20	FY 2020-21
Personal Income	(\$80.3)	(\$185.0)
Sales & Use	\$62.1	\$118.8
Corporate Income & Franchise Taxes	(\$1.0)	\$3.1
Total Adjustments	(\$19.2)	(\$63.1)

Note: Table includes changes to both General Fund and Highway Fund taxes

8

Quick Tax Terminology Refresher

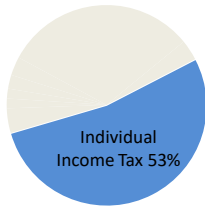
Tax Rate x Tax Base – Credits = Tax Liability

- Tax Base:** All of the items or activities subject to tax
- Tax Rate:** Percentage of the tax base owed in taxes
- Tax Liability:** Amount of tax owed
- Deductions** reduce the tax base
- Credits** directly reduce tax liability

9

9

General Fund: Individual Income Tax



FY 2018-19: \$13.2 Billion

- 4.7 million TY 2018 returns
- More than 20% of returns have \$0 in tax liability
- Calculation is simpler than Federal taxes:
 - Flat rate
 - Four itemized deductions
 - Few credits and deductions



10

Individual Income Tax: Rate

5.25 %

- Flat rate
- Applies to all types of income, including capital gains
- Reduced from 5.499% for 2018 tax year
- Before 2014 tax year, there were three marginal tax rates: 6%, 7%, and 7.75%



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Individual Income Tax: Base

North Carolina Taxable Income

- = (Federal Adjusted Gross Income
 - Amounts exempt from State tax
 - + Amounts taxed by the State but not by the feds
 - Itemized or Standard Deduction
 - Child Deduction)
- × % of income derived from NC sources



12

Standard vs. Itemized Deduction

STANDARD DEDUCTION

- Amount Determined by Filing Status
 - Joint Filers: \$21,500
 - Single Filers:\$10,750
 - Head of Household:\$16,125
- Increased by 7.5% in TY 2020

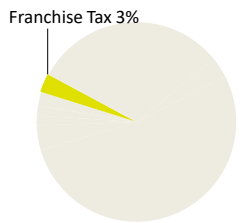
ITEMIZED DEDUCTION

- Charitable Contributions
 - Federal rules apply
- Medical and Dental Expenses
 - Deduction allowed for expenses that exceed 10% of AGI for 2019/2020
 - Federal threshold is now 7.5%
- Capped at \$20,000
 - Home mortgage interest
 - Property taxes paid on real estate

13

13

General Fund: Franchise Tax



FY 2018-19: \$0.7 Billion

- Tax imposed for:
 - The privilege of engaging in business
 - The benefit and protection received from the government and laws of NC in doing business
- Paid by:
 - C corporations (about 80,000)
 - S corporations (about 160,000)
 - Limited liability companies (LLC) pay \$200 annual report filing fee in lieu of Franchise Tax

15

15

Franchise Tax: Rate

0.15%
(\$1.50 per \$1,000)

16

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Franchise Tax: Base

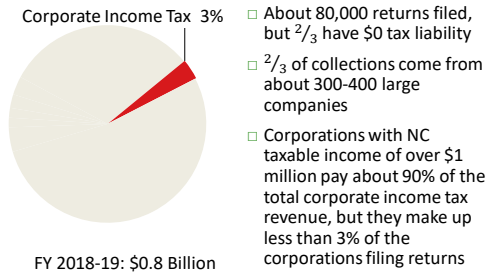
The rate is applied to the highest of three alternate bases:

1. Net Worth apportioned to NC using the apportionment percentage determined for income tax
2. Book value of NC real and tangible personal property, less outstanding debt created to acquire or improve the real property
3. 55% of the appraised value of NC real and tangible personal property

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General Fund: Corporate Income Tax



18

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Corporate Income Tax: Rate

2.5 %

- Reduced from 3.0% for tax year 2018
- For tax year 2013, the rate was 6.9%

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Corporate Income Tax: Base

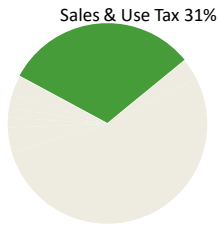
Income subject to North Carolina tax

- = (Federal Taxable Income
- Amounts exempt from State tax
- + Amounts taxed by the State but not by the feds)
- × % of income apportioned to NC



20

General Fund: State Sales & Use Tax



FY 2018-19: \$7.8 Billion

- State sales tax rate is 4.75%
- The sales tax is imposed on final sales of tangible personal property, digital property and certain services occurring in the State.
- Use tax is imposed on purchases made outside the State if the taxable item purchased is used or stored in NC.

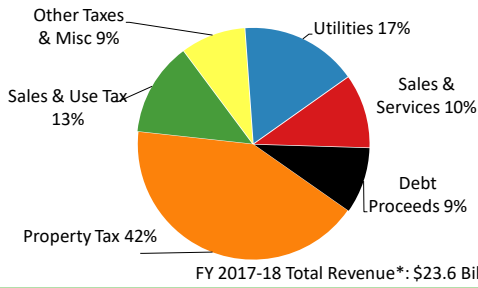


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22

Local Revenue by Source

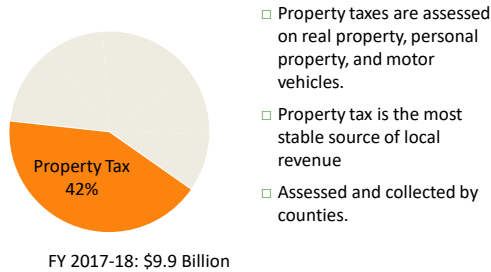


Source: North Carolina Department of State Treasurer
 *Intergovernmental transfers are not included

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Local Revenue: Property Tax



24

24

Property Tax: Rate

- Local governments set their own property tax rate
- Local property tax rates are calculated against each \$100 in value
 - Average: 0.68 (counties), 0.44 (municipalities)
 - Highest: 1.00 (Scotland)
 - Lowest: 0.31 (Carteret)
- Lowest rates in mountain and coastal counties

25

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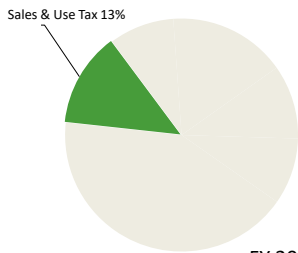
Property Tax: Base

- N.C. Constitution gives the General Assembly sole power to classify property for taxation
- Classes of property must be taxed uniformly
- Only the General Assembly has authority to exempt classes of property and exemptions must be on a State-wide basis
- Real property must be revalued at least every 8 years



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Local Revenue: Sales & Use Tax



FY 2017-18: \$3.1 Billion



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Overview of State and Local Sales and Use Taxes

FISCAL RESEARCH DIVISION
A Staff Agency of the North Carolina General Assembly

JANUARY 29, 2020

0

Sales & Use Tax as Revenue Source

» State Sales and Use Tax Revenue

- FY 2018-19: \$7.75 billion
- 2nd largest source of General Fund tax revenue (32% of the General Fund)
- Recent change: online sales tax collections
- Recent change: Expansion of sales tax base to repair, maintenance, and installation services

» Local Option Sales and Use Tax (LOST)

- FY 2018-19: \$3.5 billion
- Represents a much smaller percentage of local revenue
- County average – 14% of tax revenue
- City average – 9% of tax revenue

FISCAL RESEARCH DIVISION

1

Interplay Between State and Local Sales Taxes

» Through Statute, the State holds the power in North Carolina sales taxation. The State:

- Determines what transactions are taxable.
- Sets the State tax rate and caps the amount locals may levy.
- Administers and collects the taxes.
- Establishes how the tax revenue may be used.
- Decides how LOST revenue is redistributed among the counties.
- Sets the parameters for how LOST revenue is distributed between the counties and their municipalities.

FISCAL RESEARCH DIVISION

2

State General Sales Tax Rate is 4.75%

- » State general rate of tax applies to the retail sale, lease, or rental of the following:
 - All tangible personal property unless the transaction is specifically exempt from sales tax
 - Any services upon which the tax is specifically imposed
- » LOST applies to any sale taxed at the State general rate
 - Groceries included in a portion of the local tax base; exempt from the State tax base
 - Local rates vary from 2% to 2.75%

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3

State Combined General Rate is 7%

- » Applies to the following transactions:
 - Spirituous liquor
 - Telecommunications and video programming
 - Electricity and piped natural gas
 - Aviation gasoline and jet fuel
- » The local rate(s) do not apply to these transactions.
- » The State distributes some of the proceeds of this State tax to municipalities.

FISCAL RESEARCH DIVISION

4






Sales Tax Rates Across the State

Counties	State	+	Local	=	Total
56 Counties Alamance; Alleghany; Avery; Beaufort; Bertie; Bladen; Brunswick; Burke; Caldwell; Camden; Carteret; Caswell; Chatham; Chowan; Cleveland; Columbus; Craven; Currituck; Dare; Davie; Forsyth; Franklin; Gates; Granville; Guilford; Henderson; Hoke; Hyde; Iredell; Johnston; Lenoir; Macon; Madison; McDowell; Mitchell; Nash; Northampton; Pamlico; Pender; Perquimans; Person; Polk; Richmond; Scotland; Stokes; Transylvania; Tyrrell; Union; Vance; Warren; Washington; Watauga; Wayne; Wilson; Yadkin; Yancey	4.75%	+	2.0%	=	6.75%
40 Counties Alexander; Anson; Ashe; Buncombe; Cabarrus; Catawba; Cherokee; Clay; Cumberland; Davidson; Duplin; Edgecombe; Gaston; Graham; Greene; Halifax; Harnett; Haywood; Hertford; Jackson; Jones; Lee; Lincoln; Martin; Montgomery; Moore; New Hanover; Onslow; Pasquotank; Pitt; Randolph; Robeson; Rockingham; Rowan; Rutherford; Sampson; Stanly; Surry; Swain; Wilkes	4.75%	+	2.25%	=	7.0%
2 Counties Mecklenburg; Wake	4.75%	+	2.5%	=	7.25%
2 Counties Durham; Orange	4.75%	+	2.75%	=	7.50%

FISCAL RESEARCH DIVISION

5


Local Sales Tax Rates and Distributions

Article	Rate	Purpose	Distribution	Levied By
Art. 39 1 st 1c		Any lawful purpose	Generally point of collection; shared with cities.	100 counties
Art. 40 1 st ½c		30%: School capital 70%: Any lawful purpose	Generally per capita; shared with cities.	100 counties
Art. 42 2 nd ½c		60%: School capital 40%: Any lawful purpose	Generally point of collection; shared with cities.	100 counties
Art. 46 ¾c		Any lawful purpose	Point of collection; county only.	42 counties
Art. 43 ½c or ¼c		Public transportation	Point of collection to county; shared per capita with cities that operate transit.	4 counties

FISCAL RESEARCH DIVISION 6

6

Local Sales Tax Rates and Distributions

Article	Rate	Purpose	Distribution	Levied By
Art. 39 1 st 1c		Any lawful purpose	Generally point of collection; shared with cities.	100 counties
Art. 40 1 st ½c		30%: School capital, 70%: Any purpose	Generally per capita; shared with cities.	100 counties
Art. 42 2 nd ½c		60%: School capital, 40%: Any purpose	Generally pt. of collection; shared w/cities.	100 counties
Art. 46 ¾c		Any lawful purpose	Point of collection; county only.	42 counties
Art. 43 ½c or ¼c		Public transportation	Pt of collection to county; shared per capita with cities that operate transit.	4 counties

» The tax proceeds for everything but groceries are returned 100% to the county that levied the tax.


» Counties must share revenue with cities. Statute requires each county to choose whether to share on an *ad valorem* or per capita basis.

» Grocery tax revenue is distributed using a separate formula.

FISCAL RESEARCH DIVISION 7

7

Local Sales Tax Rates and Distributions

Article	Rate	Purpose	Distribution	Levied By
Art. 39 1 st 1c		Any lawful purpose	Generally point of collection; shared with cities.	100 counties
Art. 40 1 st ½c		30%: School capital; 70%: Any purpose	Generally per capita; shared with cities.	100 counties
Art. 42 2 nd ½c		60%: School capital, 40%: Any purpose	Generally pt. of collection; shared w/cities.	100 counties
Art. 46 ¾c		Any lawful purpose	Point of collection; county only.	42 counties
Art. 43 ½c or ¼c		Public transportation	Pt of collection to county; shared per capita with cities that operate transit.	4 counties

» Non-grocery proceeds redistributed among 100 counties based on:

- County population.
- Adjustment Factors enacted in 1988, based on where sales occurred at that time.
- Redistribution Factors enacted in 2015, designed to push money to counties that would benefit if Article 42 (not this Article) were distributed per capita.


» Counties must share with cities as with Article 39.

» Grocery tax revenue is distributed using a separate formula.

FISCAL RESEARCH DIVISION 8

8

Local Sales Tax Rates and Distributions

Article	Rate	Purpose	Distribution	Levied By
Art. 39 1st 1¢		Any lawful purpose	Generally point of collection; shared with cities.	100 counties
Art. 40 1st 1/2¢		30% School capital; 70% Any purpose	Generally per capita; shared with cities.	100 counties
Art. 42 2nd 1/2¢		60% School capital; 40% Any purpose	Generally pt. of collection; shared w/cities.	100 counties
Art. 46 1/4¢		Any lawful purpose	Point of collection; county only.	42 counties
Art. 43 1/2¢ or 1/4¢		Public transportation	Pt of collection to county; shared per capita with cities that operate transit.	4 counties

» Non-grocery proceeds are redistributed among 100 counties based on:

- County where the sale occurred (“point of collection”).
- Adjustment Factors enacted in 1988, based on where sales occurred at that time.
- Redistribution Factors enacted in 2015, designed to push money to counties that would benefit if this Article were distributed per capita.


» Counties must share the proceeds with cities as with Articles 39 and 40.

» Grocery tax revenue is distributed using a separate formula.

FISCAL RESEARCH DIVISION

9

Local Sales Tax Rates and Distributions

Article	Rate	Purpose	Distribution	Levied By
Art. 39 1st 1¢		Any lawful purpose	Generally point of collection; shared with cities.	100 counties
Art. 40 1st 1/2¢		30% School capital; 70% Any purpose	Generally per capita; shared with cities.	100 counties
Art. 42 2nd 1/2¢		60% School capital; 40% Any purpose	Generally pt. of collection; shared w/cities.	100 counties
Art. 46 1/4¢		Any lawful purpose	Point of collection; county only.	42 counties
Art. 43 1/2¢ or 1/4¢		Public transportation	Pt of collection to county; shared per capita with cities that operate transit.	4 counties

» Enacting Article 46 requires a successful referendum.

- Counties held 34 referenda in 2018-2019; 11 successfully passed the tax.
- The ballot language is written in Statute.

» All funds are returned to the county where the tax is levied.



» Counties do not share proceeds with cities.

» This tax does not apply to groceries; otherwise, the base is the same.

FISCAL RESEARCH DIVISION

10

Local Sales Tax Rates and Distributions

Article	Rate	Purpose	Distribution	Levied By
Art. 39 1st 1¢		Any lawful purpose	Generally point of collection; shared with cities.	100 counties
Art. 40 1st 1/2¢		30% School capital; 70% Any purpose	Generally per capita; shared with cities.	100 counties
Art. 42 2nd 1/2¢		60% School capital; 40% Any purpose	Generally pt. of collection; shared w/cities.	100 counties
Art. 46 1/4¢		Any lawful purpose	Point of collection; county only.	42 counties
Art. 43 1/2¢ or 1/4¢	 or 	Public transportation	Pt of collection to county; shared per capita with cities that operate transit.	4 counties

» Statute allows 6 counties to levy this tax at 1/2¢; the remaining 94 may levy the tax at 1/4¢. Enacting Article 43 requires a successful referendum.

» All funds are returned to the county where the tax is levied.

» The county shares the transit tax proceeds with any of its cities that operate a transit system.

» Tax does not apply to groceries.

FISCAL RESEARCH DIVISION

11

Distribution of Sales Tax Proceeds from Grocery Sales

- » The State sales tax (4.75%) on groceries was repealed in 1999; the local 2% tax remains in place.
- » 50% is distributed per capita based on county population, but adjusted using the Adjustment Factors enacted in 1988, based on where sales occurred then.
- » 50% is distributed to counties proportionally based on the amount of sales tax on groceries collected per county in FY 1997-1998.

Fiscal Research Division

12

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Local Sales Tax: Final Thoughts

- » Locals levy local sales taxes; the State collects, administers, and redistributes the tax proceeds.
- » The State retains a small portion of the proceeds to cover administrative costs.
- » Local sales taxes are redistributed among the 100 counties in complex ways that have grown increasingly complex and outdated.
- » In February, you will hear a presentation from staff about ways to simplify and modernize the distributions.

Fiscal Research Division

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TAX ACTIONS FROM THE 2019 LEGISLATIVE SESSION

January 29, 2019

Nick Giddings
Legislative Analysis Division

1

MAJOR FINANCE BILLS THIS SESSION

ENACTED INTO LAW

- SB 56: Revenue Laws Technical Changes
- HB 537: Alt. Hwy Use Tax Vehicle Subscriptions
- SB 523: Revenue Laws Clarifying & Administrative Changes
- SB 498: Facilitate Response to Disasters
- HB 399: Extend Tax Credits/Other Finance Changes
- SB 557: Various Finance Law Changes

STILL AROUND

- Vetoed By Governor:*
 - SB 578: Reduce Franchise Tax
 - HB 966: 2019 Appropriations Act (Part XLI)
- In Conference:*
 - SB 681: Local Sales Tax Flexibility

2

2

BILLS ENACTED INTO LAW

Some early on ...
Some just recently

3

3

REVENUE LAWS TECHNICAL CHANGES

- IRC Update January 1, 2019
- Codification of the Wayfair thresholds for sales tax collection and remittance
- Technical Changes requested by Department of Revenue



Senate Bill 56

S.L. 2019-6

4

4

ALT. HWY USE TAX VEHICLE SUBSCRIPTIONS



- Alternative highway use tax rates vary depending upon the length
 - Long term lease, 3% tax rate
 - Short term lease, 8% tax rate
- Vehicle subscription service – which is it?
- Department of Revenue had previously ruled that a vehicle subscription represents a short-term lease and is subject to the higher tax rate.
- This law defined the term “vehicle subscription service” and created a new, separate 5% tax rate.

House Bill 537 S.L. 2019-69

5

5

REVENUE LAWS CLARIFYING & ADMINISTRATIVE CHANGES

- Clarifies that counties must wait at least one year between referenda on the issue of levying the ¼ cent local option sales tax.
- Expands the digital property sales tax by eliminating the requirement that an item have a taxable, tangible corollary in order to be taxable.
- Exempts from sales tax “limited-service vehicle washes.”
- Exempts from sales tax the sales of equipment used in cutting, shaping, polishing, and finishing slabs of natural and engineered stone sold to a company selling made-to-order countertops, walls, or tubs.

Senate Bill 523

S.L. 2019-169

6

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REVENUE LAWS CLARIFYING & ADMINISTRATIVE CHANGES (CONT'D)

- Exempts from sales tax certain incontinence supplies when those supplies are paid by the State's Medicaid program.
- Regulates the online sale of tobacco products, other than cigars.
- Provides that repair, maintenance, and installation (RMI) services supplied by a real property manager under a property management contract are subject to sales and use tax in the following circumstances:
 - RMI services are provided at additional charge.
 - Real property manager arranges third party to provide RMI services and imposes additional contract amount or charge for arranging these services.
 - More than 25% of the time spent managing the property for the billing or invoice period is attributable to taxable RMI services.

Senate Bill 523

S.L. 2019-169

7

7

FACILITATE RESPONSE TO DISASTERS

- Excludes a nonresident business or nonresident employee from income, franchise, and unemployment insurance tax as well as business registration requirements when:
 - The business or employee comes into the State at the request of a critical infrastructure company
 - The business or employee has no other income attributable to this State
- Allows the Secretary of Revenue to issue a temporary license to an importer, exporter, distributor, or transporter of motor fuel in response to a disaster declaration

Senate Bill 498

S.L. 2019-187

8

8

EXTEND TAX CREDITS/OTHER FINANCE CHANGES

- Income exclusion for IRA distributions to charities by taxpayers age 70 1/2 or older
- Deduction for amounts received as economic development grants from JDIG, JMAC, and OneNC
- Extend historic rehabilitation tax credit
- Expand the mill rehabilitation tax credit
- Extend sales tax exemptions or refunds for:
 - Qualifying airlines
 - Professional motorsports teams
- Extend for 10 years the dry cleaning solvent tax and the corresponding funds transfer to the Dry Cleaning Solvent Cleanup Fund.
- Sets the insurance regulatory charge for the 2020 calendar year.

House Bill 399

S.L. 2019-237

9

9

VARIOUS FINANCE LAW CHANGES

- Increase standard deduction to \$21,500
 - Reduces individual income tax liability by up to \$79 for joint filers.
- Expand definition of “holding company”
- Use market-based sourcing for multistate income tax apportionment
 - NC fully phased in single sales factor apportionment in 2018, providing a market-based calculation for companies that sell goods.
 - This enacts a market-based calculation of the sales factor for companies that provide services.

Senate Bill 557

S.L. 2019-246

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VARIOUS FINANCE LAW CHANGES (CONT'D)

- Marketplace Facilitator Sales Tax Language:
 - From a sales tax perspective, there are two types of online retailers.
 - “Marketplace facilitators” don’t own and sell items, but facilitate sales between two unrelated parties (e.g., eBay, Etsy, Amazon’s marketplace).
 - After *South Dakota v. Wayfair, Inc.*, the North Carolina Department of Revenue required online retailers that met certain criteria and thresholds to calculate, collect, and remit sales taxes.
 - North Carolina Department of Revenue needed additional statutory language to require marketplace facilitators that meet the same thresholds to calculate, collect, and remit sales tax on third-party seller’s behalf.

Senate Bill 557

S.L. 2019-246

11

11

Overview of US Supreme Court Decision in Kaestner

Revenue Laws Study Committee
January 29, 2020
Greg Roney, Legislative Analysis Division

1

G.S. 105–160.2

- Taxes trust income if beneficiary lives in NC
- US Supreme Court held unconstitutional as applied (under Due Process Clause of the Fourteenth Amendment)
- G.S. 105–160.2 remains facially constitutional and valid in other circumstances
- US Supreme Court notes NC alone in residency as sole factor (NC disputes)

2

Kaestner Case Summary

US Supreme Court held trust lacked sufficient connection for NC to tax the trust's income

- Beneficiary lived in NC
- Trustee, records, and investments were **NOT** in NC
- Beneficiary received **NO** trust income
- Beneficiary had **NO** right to demand income
- Beneficiary was **UNCERTAIN** to ever receive a specific share of trust income

3

NC Dept of Revenue Response

- Sent an informational document request to trusts that timely filed a request for refund
- Information necessary to determine if Kaestner applies

4

Fiscal Impact

- Total trust income tax by tax year (as of 12/13/18)
 - 2016: \$85,132,058
 - 2017: \$100,432,417
- Claims for refund
 - \$10.5 million filed

5

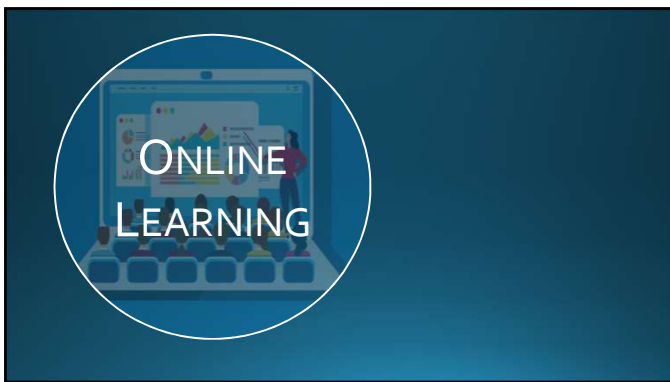
Next Steps

- Administer under current statute
- Expand taxation to presence of trustee, trust office, settlor
- Limit taxation to beneficiary presence plus specific factor(s)

6



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3

E-Learning in Education

- In 2015, 49% of students had taken an online course in the last 12 months.
- In 2017, 15% of US college students were enrolled entirely in online courses.
- 43% of US college students find digital learning technologies "extremely helpful."
- E-learning enables students to learn 5x more material for every hour of studying or training.



4

Corporate E-Learning



- 77% of US corporations use e-learning resources.
- Companies use e-learning in a variety of contexts:
 - Specific skill development
 - Health and safety training
 - Personnel issues and new employee onboarding
 - Industry trends and regulations
 - "Soft" skills, such as leadership, people management, problem-solving, collaboration, and communication
- Reduces training time, improves knowledge retention, increases productivity, appeals to modern workforce, and results in increased profits.

5

Personal Development E-Learning



6



7

General Principles

- There is no universally recognized definition of "digital products."
- SSUTA has some definitions to which members must adhere, but states are not required to tax or align taxability with the definitions.
- Digital products are often comprised of a mix of TPP, intangible property, and digital services.
- Tax treatment varies widely across states.
 - 30 states tax digital products
 - 22 states tax streaming services
 - 17 states tax cloud computing or "software as a service"

8

Federal Landscape

- **(Permanent) Internet Tax Freedom Act (P-ITFA)**
 - Temporary moratorium in 1998; renewed 5x; made permanent in 2016.
 - Bans taxes on Internet access and multiple and discriminatory taxation of electronic commerce.
 - States can't tax an online version of a transaction if its similar offline version is not subject to tax.
- **Digital Goods and Services Tax Fairness Act**
- Federal guidance unlikely

9

What Digital Property Does NC Tax?

- Delivered or accessed electronically; and
- Is one of the following:
 - Audio work
 - Audiovisual work
 - A book, magazine, newspaper, newsletter, report, or another publication
 - Photograph or greeting card
- Digital codes used to purchase any of these products.



10

What Digital Property is Not Taxed in NC?

- Information Services
- Data Processing Services
- Software as a Service (SaaS)
- Video Game Services and Tournaments
- Storage of Electronic Files, Documents, or Records
- Finished artwork



11

2019 Expansion

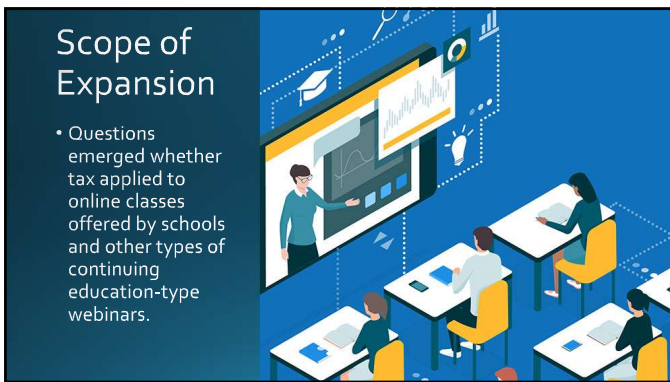


- NC continued trend toward base expansion by expanding scope of digital property tax.
- Effective Oct. 1, 2019, digital property is not required to have a tangible corollary in order to be taxable (S.L. 2019-169).
- Must still be a specified digital product.
- As a result, certain e-learning materials consisting of access to online video catalog of continuing education courses are now taxable.

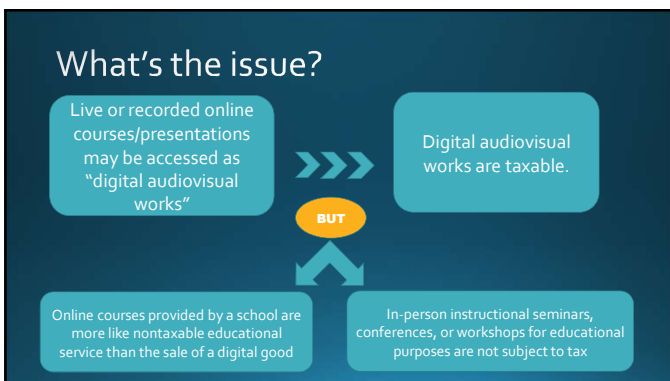
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15

Online School Courses

Other State Approaches:

- Option #1: Exempt online educational programs based on the provider:
 - Public or private elementary or secondary school
 - Institution of higher education (defined by federal law)
 - Public or private colleges or universities
 - Community colleges
 - Religious schools/seminaries
 - Proprietary schools
- Require that course be part of school's accreditation or be taken in pursuit of degree, license, or certificate.

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Online School Courses

Option #2:

- Exempt online courses where 1 of the following factors is met:
 - Contemporaneous interaction between students/participants and instructor
 - Non-automated testing or evaluation by instructor
- This would also capture certain presentations that are not offered by a school.

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Other Online "Live" Presentations

- Most states exempt *in-person* attendance at live "educational" presentations.
- ITFA prohibits "discriminatory taxation" on ecommerce.
- To avoid violating ITFA, states exempt online viewing of these educational presentations.
- States take 2 approaches regarding exemption:
 - **Narrow** – Exempt online viewing only if ability to participate is substantially similar for in-person attendance.
 - **Broad** – Exempt online viewing of any type of real-time, live presentation if in-person attendance is not subject to tax, regardless of ability to participate.

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Examples

- Person purchases access to watch a continuing education course online, which is viewed in real-time. Person is able to submit questions to presenter through "chat" feature. → Not taxable under either approach.
- Person purchases access to watch a continuing education course online, which is viewed in real-time. Person is not able to submit questions to presenter. → Not taxable under broad approach; taxable under narrow approach.
- Person purchases access to watch a continuing education course online on-demand as a "video replay." Course is not viewed in real-time and person cannot participate or ask questions. → Taxable under either approach.

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Policy Questions – "Must Do"

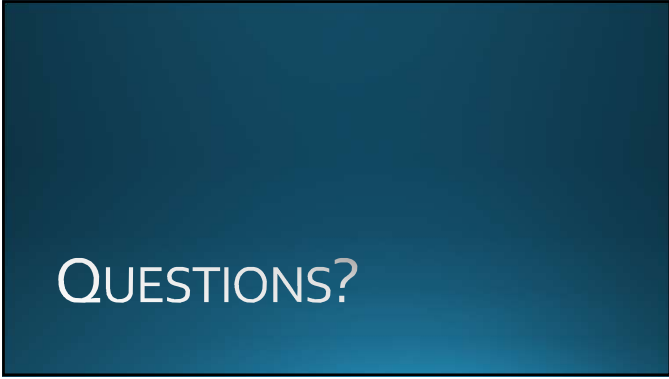
1. Clarify tax treatment of online classes provided by schools.
 - By provider?
 - Must course be part of school's accreditation or be taken in pursuit of degree, license, or certificate?
 - Based on nature of product – i.e., "educational service" (instruction and evaluation) vs. a "digital good" (purely self-study video)?
2. Clarify tax treatment of other educational "live" presentations for which NC does not tax in-person attendance.
 - At a minimum, should exempt online version when substantially similar to in-person attendance.
 - Could enact a broader exemption.

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Policy Questions – "Could Do"

3. Any changes to current tax treatment of other types of pre-recorded digital audiovisual works?
 - Under current law, all pre-recorded on-demand lectures, webinars, conferences, videos, regardless of whether educational or otherwise, are taxable digital goods.
 - If so, what is basis for exemption?
- Factors to consider:
 - Treat similar transactions similarly
 - Objective criteria
 - Ease of administration

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22

Modernizing the State's Local Sales Tax Distributions: County Estimates

Yearly Estimates of Local Sales Tax Distributions to the Counties, with Options for Modernization

At its 2/12/2020 meeting, the Revenue Laws committee heard a presentation about various ways to modernize the State's local sales tax distributions. The following county-level estimates were prepared as a follow-up.

**based on FY 18-19 Data*

County	Current Formula	Estimate w/no		Estimate with		
		Add'l Funding 60/30/7/3 Model	Percent Change from current formula	Add'l Funding 52/35/10/3 Model	Estimated 50 / 50 Split	Estimated 75 / 25 Split
ALAMANCE	31,520,000.00	30,500,000.00	-3.24%	33,570,000.00	30,700,000.00	32,200,000.00
ALEXANDER	8,424,000.00	8,060,000.00	-4.32%	9,350,000.00	8,680,000.00	7,150,000.00
ALLEGHANY	2,265,000.00	2,480,000.00	9.49%	2,885,000.00	2,320,000.00	2,000,000.00
ANSON	3,784,000.00	3,980,000.00	5.18%	4,680,000.00	3,979,000.00	3,270,000.00
ASHE	7,318,000.00	7,520,000.00	2.76%	8,440,000.00	7,440,000.00	7,000,000.00
AVERY	5,761,000.00	5,970,000.00	3.63%	6,652,000.00	5,320,000.00	5,600,000.00
BEAUFORT	9,796,000.00	10,000,000.00	2.08%	11,400,000.00	9,970,000.00	9,520,000.00
BERTIE	2,662,000.00	2,930,000.00	10.07%	3,510,000.00	2,930,000.00	2,210,000.00
BLADEN	6,311,000.00	6,420,000.00	1.73%	7,560,000.00	6,700,000.00	5,520,000.00
BRUNSWICK	26,289,000.00	26,100,000.00	-0.72%	29,500,000.00	25,600,000.00	26,200,000.00
BUNCOMBE	90,502,000.00	86,900,000.00	-3.98%	93,600,000.00	84,260,000.00	90,900,000.00
BURKE	15,565,000.00	14,600,000.00	-6.20%	16,900,000.00	15,700,000.00	14,000,000.00
CABARRUS	51,751,000.00	51,600,000.00	-0.29%	56,200,000.00	51,000,000.00	53,200,000.00
CALDWELL	11,660,000.00	11,400,000.00	-2.23%	13,290,000.00	12,250,000.00	10,600,000.00
CAMDEN	2,164,000.00	2,440,000.00	12.75%	2,860,000.00	2,380,000.00	1,950,000.00
CARTERET	18,298,000.00	17,200,000.00	-6.00%	18,900,000.00	16,500,000.00	17,800,000.00
CASWELL	4,310,000.00	4,300,000.00	-0.23%	5,130,000.00	4,640,000.00	3,420,000.00
CATAWBA	38,205,000.00	37,920,000.00	-0.75%	41,500,000.00	38,200,000.00	38,900,000.00
CHATHAM	14,676,000.00	15,400,000.00	4.93%	17,900,000.00	15,400,000.00	14,200,000.00
CHEROKEE	8,014,000.00	8,350,000.00	4.19%	9,290,000.00	8,220,000.00	7,950,000.00
CHOWAN	3,157,000.00	3,400,000.00	7.70%	3,900,000.00	3,140,000.00	2,880,000.00
CLAY	2,791,000.00	3,120,000.00	11.79%	3,580,000.00	2,996,000.00	2,640,000.00
CLEVELAND	20,213,000.00	19,800,000.00	-2.04%	22,500,000.00	20,550,000.00	19,400,000.00
COLUMBUS	10,023,000.00	9,800,000.00	-2.22%	11,400,000.00	10,400,000.00	9,060,000.00
CRAVEN	19,135,000.00	18,700,000.00	-2.27%	21,000,000.00	19,500,000.00	18,900,000.00
CUMBERLAND	56,162,000.00	56,750,000.00	1.05%	62,900,000.00	59,000,000.00	58,100,000.00
CURRITUCK	10,744,000.00	11,500,000.00	7.04%	12,600,000.00	10,300,000.00	11,300,000.00
DARE	20,807,000.00	19,700,000.00	-5.32%	20,900,000.00	15,700,000.00	19,800,000.00
DAVIDSON	30,594,000.00	28,900,000.00	-5.54%	32,870,000.00	31,500,000.00	28,100,000.00
DAVIE	9,541,000.00	10,000,000.00	4.81%	11,500,000.00	10,100,000.00	9,220,000.00
DUPLIN	11,679,000.00	11,200,000.00	-4.10%	12,800,000.00	12,100,000.00	10,500,000.00
DURHAM	98,820,000.00	96,500,000.00	-2.35%	102,000,000.00	94,500,000.00	98,800,000.00
EDGECOMBE	7,786,000.00	7,370,000.00	-5.34%	8,560,000.00	7,710,000.00	6,660,000.00
FORSYTH	68,594,000.00	68,290,000.00	-0.44%	76,200,000.00	69,200,000.00	70,900,000.00
FRANKLIN	13,868,000.00	13,900,000.00	0.23%	16,100,000.00	14,800,000.00	12,700,000.00
GASTON	44,213,000.00	43,200,000.00	-2.29%	48,660,000.00	45,200,000.00	43,100,000.00
GATES	2,321,000.00	2,330,000.00	0.39%	2,770,000.00	2,410,000.00	1,790,000.00
GRAHAM	2,117,000.00	2,230,000.00	5.34%	2,560,000.00	2,110,000.00	1,890,000.00
GRANVILLE	8,625,000.00	8,570,000.00	-0.64%	10,200,000.00	9,180,000.00	7,590,000.00
GREENE	3,977,000.00	4,010,000.00	0.83%	4,740,000.00	4,300,000.00	3,210,000.00
GUILFORD	92,479,000.00	93,100,000.00	0.67%	104,000,000.00	94,500,000.00	96,600,000.00
HALIFAX	10,776,000.00	10,800,000.00	0.22%	12,200,000.00	11,000,000.00	10,400,000.00
HARNETT	27,801,000.00	26,290,000.00	-5.44%	30,200,000.00	29,100,000.00	25,000,000.00
HAYWOOD	15,487,000.00	15,800,000.00	2.02%	17,600,000.00	15,800,000.00	15,500,000.00
HENDERSON	26,539,000.00	26,700,000.00	0.61%	30,100,000.00	27,300,000.00	26,500,000.00
HERTFORD	5,103,000.00	5,220,000.00	2.29%	5,910,000.00	5,150,000.00	4,710,000.00
HOKE	9,257,000.00	9,100,000.00	-1.70%	10,800,000.00	10,240,000.00	7,900,000.00
HYDE	1,560,000.00	1,890,000.00	21.15%	2,160,000.00	1,640,000.00	1,590,000.00
IREDELL	37,984,000.00	38,400,000.00	1.10%	42,700,000.00	38,500,000.00	39,500,000.00
JACKSON	13,592,000.00	14,100,000.00	3.74%	15,600,000.00	13,900,000.00	13,800,000.00
JOHNSTON	44,076,000.00	43,800,000.00	-0.63%	49,500,000.00	45,600,000.00	43,600,000.00

Modernizing the State's Local Sales Tax Distributions: County Estimates

County	Current Formula	Estimate w/no		Estimate with		
		Add'l Funding 60/30/7/3 Model	Percent Change from current formula	Add'l Funding 52/35/10/3 Model	Estimated 50 / 50 Split	Estimated 75 / 25 Split
JONES	2,170,000.00	2,310,000.00	6.45%	2,700,000.00	2,260,000.00	1,840,000.00
LEE	14,623,000.00	14,900,000.00	1.89%	16,500,000.00	14,800,000.00	14,700,000.00
LENOIR	11,569,000.00	11,400,000.00	-1.46%	12,900,000.00	11,700,000.00	11,000,000.00
LINCOLN	21,791,000.00	21,700,000.00	-0.42%	24,300,000.00	22,200,000.00	21,200,000.00
MACON	10,470,000.00	10,800,000.00	3.15%	12,000,000.00	10,288,400.00	10,700,000.00
MADISON	4,002,000.00	4,100,000.00	2.45%	4,810,000.00	4,190,000.00	3,414,000.00
MARTIN	4,974,000.00	5,360,000.00	7.76%	6,090,000.00	5,238,000.00	4,789,000.00
MCDOWELL	10,285,000.00	10,100,000.00	-1.80%	11,500,000.00	10,600,000.00	9,610,000.00
MECKLENBURG	317,512,000.00	321,000,000.00	1.10%	346,000,000.00	312,000,000.00	334,000,000.00
MITCHELL	3,638,000.00	3,960,000.00	8.85%	4,500,000.00	3,710,000.00	3,460,000.00
MONTGOMERY	5,518,000.00	5,560,000.00	0.76%	6,410,000.00	5,540,000.00	4,870,000.00
MOORE	18,983,000.00	18,600,000.00	-2.02%	20,800,000.00	18,700,000.00	18,800,000.00
NASH	15,948,000.00	15,640,000.00	-1.93%	17,600,000.00	16,080,200.00	15,700,000.00
NEW HANOVER	76,922,000.00	74,300,000.00	-3.41%	79,900,000.00	71,600,000.00	77,600,000.00
NORTHAMPTON	3,127,000.00	3,540,000.00	13.21%	4,250,000.00	3,370,000.00	2,730,000.00
ONslow	43,417,000.00	43,300,000.00	-0.27%	47,800,000.00	45,600,000.00	44,100,000.00
ORANGE	31,671,000.00	32,600,000.00	2.93%	36,500,000.00	32,100,000.00	30,900,000.00
PAMLICO	2,973,000.00	3,280,000.00	10.33%	3,800,000.00	3,060,000.00	2,700,000.00
PASQUOTANK	9,282,000.00	9,600,000.00	3.43%	10,700,000.00	9,490,000.00	9,370,000.00
PENDER	14,005,000.00	14,290,000.00	2.03%	16,400,000.00	14,400,000.00	13,300,000.00
PERQUIMANS	2,152,000.00	2,398,000.00	11.43%	2,860,000.00	2,320,000.00	1,800,000.00
PERSON	8,701,000.00	8,978,000.00	3.18%	10,300,000.00	9,020,000.00	8,290,000.00
PITT	33,035,000.00	32,650,000.00	-1.17%	36,100,000.00	33,700,000.00	33,300,000.00
POLK	4,502,000.00	4,710,000.00	4.62%	5,450,000.00	4,540,000.00	4,060,000.00
RANDOLPH	26,094,000.00	24,800,000.00	-4.96%	28,400,000.00	26,800,000.00	23,900,000.00
RICHMOND	7,284,000.00	7,330,000.00	0.63%	8,460,000.00	7,520,000.00	6,800,000.00
ROBESON	26,161,000.00	24,800,000.00	-5.20%	28,000,000.00	27,200,000.00	24,300,000.00
ROCKINGHAM	15,562,000.00	14,920,000.00	-4.13%	17,200,000.00	15,900,000.00	14,100,000.00
ROWAN	26,559,000.00	25,900,000.00	-2.48%	29,200,000.00	27,300,000.00	25,400,000.00
RUTHERFORD	14,952,000.00	14,600,000.00	-2.35%	16,500,000.00	15,200,000.00	14,080,000.00
SAMPSON	13,397,000.00	13,200,000.00	-1.47%	15,200,000.00	14,000,000.00	12,300,000.00
SCOTLAND	7,475,000.00	7,500,000.00	0.33%	8,615,000.00	7,670,000.00	6,890,000.00
STANLY	10,713,000.00	10,540,000.00	-1.61%	12,000,000.00	10,800,000.00	10,200,000.00
STOKES	9,339,000.00	8,980,000.00	-3.84%	10,500,000.00	9,660,000.00	8,010,000.00
SURRY	19,165,000.00	18,700,000.00	-2.43%	20,600,000.00	19,200,000.00	18,800,000.00
SWAIN	3,608,000.00	3,670,000.00	1.72%	4,110,000.00	3,651,000.00	3,390,000.00
TRANSYLVANIA	8,273,000.00	8,648,000.00	4.53%	9,862,000.00	8,370,000.00	8,030,000.00
TYRRELL	813,000.00	931,493.00	14.57%	1,100,000.00	883,000.00	726,000.00
UNION	47,203,000.00	47,900,000.00	1.48%	55,000,000.00	49,600,000.00	46,400,000.00
VANCE	9,137,000.00	9,150,000.00	0.14%	10,400,000.00	9,380,000.00	8,784,000.00
WAKE	268,717,000.00	270,000,000.00	0.48%	291,000,000.00	268,000,000.00	278,000,000.00
WARREN	3,655,000.00	3,930,000.00	7.52%	4,740,000.00	3,860,000.00	2,990,000.00
WASHINGTON	2,452,000.00	2,590,000.00	5.63%	3,010,000.00	2,500,000.00	2,140,000.00
WATAUGA	12,863,000.00	12,800,000.00	-0.49%	14,200,000.00	12,500,000.00	13,000,000.00
WAYNE	23,398,000.00	22,600,000.00	-3.41%	25,600,000.00	24,200,000.00	22,700,000.00
WILKES	17,923,000.00	17,390,000.00	-2.97%	19,500,000.00	18,100,000.00	16,800,000.00
WILSON	15,430,000.00	15,500,000.00	0.45%	17,400,000.00	15,650,000.00	15,500,000.00
YADKIN	7,267,000.00	7,210,000.00	-0.78%	8,420,000.00	7,695,000.00	6,380,000.00
YANCEY	4,115,000.00	4,380,000.00	6.44%	5,060,000.00	4,200,000.00	3,730,000.00

*Prepared 2/14/2020

MODERNIZING THE STATE'S LOCAL SALES TAX DISTRIBUTIONS

ERNEST IRVING, DEPARTMENT OF REVENUE
DENISE CANADA, FISCAL RESEARCH DIVISION

1

OVERVIEW

- The State redistributes some local sales tax revenue among the counties.
- “The redistribution” is actually many redistributions stacked together.
- The formulas could be simplified and modernized to use current data and be more transparent.
- Any changes could reduce funding to some counties and increase funding to others.
- There are policy options to minimize losses and gains among counties.

2

2

REFRESHER: LOCAL SALES TAX LEVIES

Article	Rate	Distribution
Art. 39		Most proceeds return to county that levied the tax. County shares with cities.
Art. 40		Most proceeds distributed to counties per capita. County shares with cities.
Art. 42		Most proceeds distributed based on point of sale. County shares with cities.
Art. 46		Point of collection; all proceeds return to the county that levied the tax. Not shared with cities.
Art. 43 (Transit)		Point of collection; all proceeds return to the county that levied the tax. Shared per capita with cities that operate public transit.

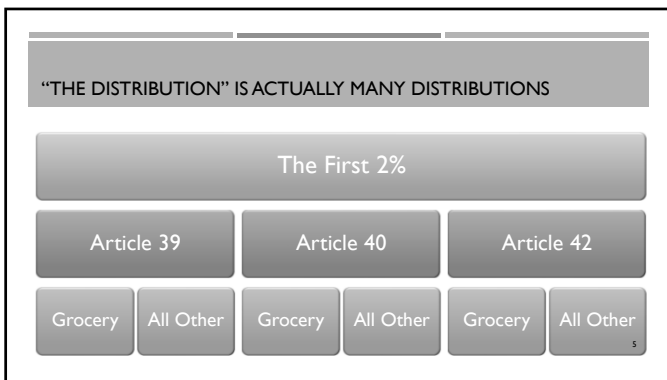
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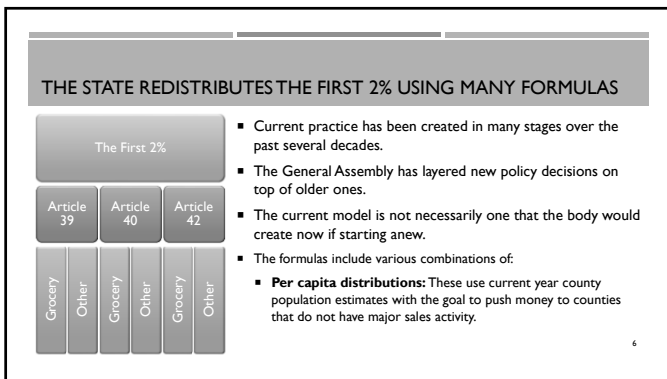
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Art. 43 (Transit) or		Point of collection; all proceeds return to the county that levied the tax. Shared per capita with cities that operate public transit.

4



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THE STATE REDISTRIBUTES THE FIRST 2% USING MANY FORMULAS

The First 2%

Article 39		Article 40		Article 42	
Grocery	Other	Grocery	Other	Grocery	Other

- Current formulas include...(cont'd):
 - Point of sale distributions:** These use current data with the goal of keeping some tax revenue where it is generated. For items shipped or delivered out of county, the "point of sale" is the "point of destination."
 - Adjustment Factors:** Created in 1988 with the goal of minimizing the impact of switching from "point of destination" to "point of origination." The State later repealed "point of origination" and reverted to original practice, but the Adjustment Factors were not repealed.
 - Point of sale grocery data:** Based on sales in FY 1997-98, which is the last year this data was collected. Retailers no longer report the county in which taxes are collected.

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THE STATE REDISTRIBUTES THE FIRST 2% USING MANY FORMULAS

The First 2%

Article 39		Article 40		Article 42	
Grocery	Other	Grocery	Other	Grocery	Other

- Current formulas include...(cont'd):
 - 2015 redistribution:** Pushes money to 79 counties with a goal of increasing funds to counties that would have benefited (as of 2015) if collections were distributed 50% per capita and 50% point of sale.
- Outside of the formulas:
 - Medicaid County Hold Harmless:** Payments from the State General Fund to counties who are losing money due to the 2007 Medicaid swap. (\$25m in FY 2010-11; \$105 million in FY 2018-19)
 - Medicaid City Hold Harmless:** Payments that shift money from a county to its cities.

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EXAMPLE: NOVEMBER 2019

\$291 m Statewide

\$145 m: Art. 39		\$73 m: Art. 40		\$73 m: Art. 42	
\$14 m grocery	\$131 m other	\$8 m grocery	\$66 m other	\$8 m grocery	\$66 m other

\$291 m distributed to locals from 2% tax collections:

- \$190,000 in tax collected from sales in Caswell County
- \$190,000 in tax collected from sales in Pamlico County

All figures today are rounded & totals may not add precisely.

Source	Caswell County	Pamlico County
Article 39 non-grocery	\$68,000	\$74,000
Article 40 non-grocery	\$137,000	\$80,000
Article 42 non-grocery	\$34,000	\$37,000
Grocery per capita	\$32,000	\$19,000
Grocery historical point of sale	\$16,000	\$20,000
2015 Redistribution	\$115,000	\$34,000
Total	\$400,000	\$262,000

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SALES TAX MODERNIZATION: PRINCIPLES

- The formulas could be simplified and updated to use current data and be more transparent
- Staff have developed the following options that use current distributions as a baseline and aim to minimize the impact on counties.
 - The current advantages and disadvantages written in Statute would continue to affect distributions.
- A new formula could simplify the formula and use current data in all calculations
 - All sales tax on grocery food distributed on a per capita basis
 - All other 2% proceeds use one formula relying on current data
- Cities receive a share of their County's revenue; this would continue.

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SALES TAX MODERNIZATION: MINIMIZING NEGATIVE IMPACTS

- As long as the overall pool of money is unchanged, any change in the formulas will result in increases and decreases in the individual county distributions.
- The overall formula can be adjusted to minimize any negative impacts
 - Overall changes of less than \$40 million are optimal – represents 1% of the distribution
 - County shifts must be evaluated individually for negative impacts
- As this transition occurs: evaluate options by measuring negative and positive impacts
- Economic growth will help to offset any revenue losses
- Additional funding could also offset revenue losses

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MINIMIZING NEGATIVE IMPACTS: DIFFERENT TYPES OF COUNTIES

- To minimize negative impacts, it is helpful to recognize the 3 basic types of counties.

Factors to Consider	Urban Counties	Counties with Tourism	Rural Counties
Rates of Sales	Generally, higher sales volume	Higher sales during tourism season	Generally, lower sales volume
Most Beneficial Allocation Method	Point of Sales %	Point of Sales %	Per Capita %
New Method to Minimize Tax Revenue Losses	Use ad valorem % to allocate a portion of proceeds	Include a tourism adjustment	Allocate 3% on an "Equity Basis"

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AD VALOREM PERCENTAGES IMPACTS

	Urban Counties	Counties with Tourism	Rural Counties
Effect of Ad Valorem Allocations	Receive more than Per Capita	Receive more than Per Capita	Receive more than Point of Sale

- An ad valorem distribution allocates money based on property tax data.
- It spreads the money to the rural counties, but not as much as per capita
- Ad valorem percentages act as a compromise for the majority of counties.
 - For most counties, using ad valorem data produces a distribution between per capita and point of sale percentages.

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TOURISM ADJUSTMENT IMPACTS

	Urban Counties	Counties with Tourism	Rural Counties
Effect of Tourism Adjustment	Slight positive Impact	Very Positive Impact	Minimal Change

- Allows counties that bring in higher-than-average sales to keep more on a point of sales basis.
- Allows other counties to receive more on a per capita basis.
- Tourism counties may see per capita sales increase as much as 500% during tourism season.
- A tourism adjustment that only takes effect for the months where tourism is higher allows the formula to provide the most positive impacts year-round.

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EQUITY FACTOR IMPACTS

	Urban Counties	Counties with Tourism	Rural Counties
Effect of 3% Equity Factor Allocation	Low Cost \$	Low Cost \$	High % Impact

- The Equity Factor allocates a small percentage to each county and each city.
- Has the effect of raising the floor, impacting the poorest counties first.
- Equity Factors are based on the number of digits in a county's population.
 - This allows the Factors to be weighted with populations while ensuring that all counties share in the state's economic growth.
 - Allows the distribution to have a "raise the floor" effect while only using a very small percentage of the funds.

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COMBINING NEW FORMULA ELEMENTS

- New formulas need to maintain the balance of the current distribution in order to minimize negative impacts
- It is difficult to find balance using just Per Capita and Point of Sale percentages.
 - Using a combination of Ad Valorem, Point of Sale, and Per Capita percentages can help to maintain relative balance for all counties.
- Each element may give advantages to different counties, but when used together, balance can be maintained in a data-driven distribution.
- Any change will bring some degree of negative impacts and positive impacts
 - If additional funding is used, the option to eliminate negative impacts is possible.

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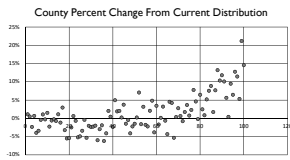
NEW FORMULA FOR CONSIDERATION

- Move to a 60/30/7/3 Model with a Tourism Adjustment
- Formula:
 - 60% Allocated on a Point of Sale Basis
 - 30% Allocated on a Per Capita Basis
 - 7% Allocated on an Ad Valorem Basis
 - 3% Allocated on an Equity Basis
- Counties with higher than average sales on a per capita basis can receive more money on a point of sale basis.
 - Example: Instead of 60/30/7/3, they could have up to 70/20/7/3.

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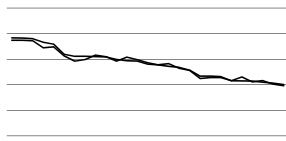
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NEW FORMULA, VISUALIZATIONS



The Counties are arranged with urban on the left and rural on the right. The 0% line is the current distribution.

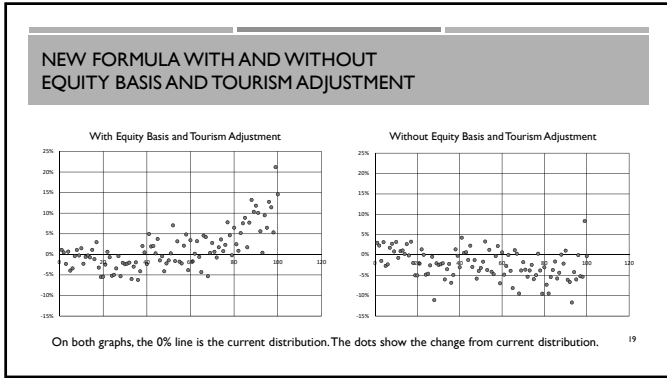
Dollar Amount Difference for Certain Counties



This graph represents a sampling of the counties. Dollar amounts are higher for some and lower for others, but generally follow the same distribution pattern.

18

18



19

- ### NEW FORMULA IMPACTS
- Some counties will see negative impacts and some will see positive impacts
 - Total money moved for all counties and cities will be \$37 million
 - Most county changes are within -5% and +10%
 - Largest county loss is -6.2%
 - Largest county gain is over 21%
 - Smaller counties gain a higher percentage, due to distributing 3% on an equity basis
 - All calculations have been done using FY 18-19 data; totals have been rounded.
- 20

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- ### ONE ALTERNATIVE OPTION: ADDITIONAL FUNDS ADDED
- Method: Move to a 52/35/10/3 Model with Tourism Adjustment and Additional Funding
 - Prior option designed without additional funds. With additional funds, every county and every city receives increased distributions.
 - Formula:
 - 52% Allocated on a Point of Sale Basis
 - 35% Allocated on a Per Capita Basis
 - 10% Allocated on an Ad Valorem Basis
 - 3% Allocated on an Equity Basis
 - Counties with higher than average sales on a per capita basis can receive more money on a point of sale basis.
 - Ex: Instead of 52/35/10/3, they could have up to 62/25/10/3.
 - Adds a calculated 0.25% amount of sales tax to the distribution, which equals \$361 Million in FY 18-19.
- 21

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OPTION WITH ADDITIONAL FUNDS ADDED, VISUALIZATIONS

Percentage Change versus current distribution for Counties using Option I

Dollar Amount Difference for Certain Counties

The Counties are arranged with urban on the left and rural on the right. The 0% line is the current distribution.

This graph represents a sampling of the counties. Dollar amounts are higher for all, but generally follow the same distribution pattern.

22

22

OPTION WITH ADDITIONAL FUNDS ADDED: IMPACTS

- Every County and City gets increased distributions
 - More than the current formula
 - More than a 75% point of Sale / 25% Per Capita formula
 - More than a 50% point of Sale / 50% Per Capita formula
- Most counties gain between 5% and 20%, lowest gain is 0.45%
- Smaller counties gain a higher percentage, due to distributing 3% on an equity basis

23







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OTHER OPTIONS WITH LESS OPTIMAL, MIXED IMPACTS

- Infinite options available. Infinite "baselines" available for comparison.
- Options discussed in recent years:
 - 50% Point of Sale / 50% Per Capita
 - Mixed results, less optimal
 - Total money moved \$49 million
 - One county loses over 30%
 - 75% Point of Sale / 25% Per Capita
 - Mixed results, least optimal outcomes
 - Total money moved \$66 million
 - One county loses 30%

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24

CHANGES COULD BE MADE TO OTHER ARTICLES AS WELL		
Article	Rate	Distribution
Art. 39		Most proceeds return to county that levied the tax. County shares with cities.
Art. 40		Most proceeds distributed to counties per capita. County shares with cities.
Art. 42		Most proceeds distributed based on point of sale. County shares with cities.
Art. 46		Point of collection; all proceeds return to the county that levied the tax. Not shared with cities.
Art. 43 (Transit)	 or 	Point of collection; all proceeds return to the county that levied the tax. Shared per capita with cities that operate public transit. ²⁵


LOCAL OPTION SALES TAX FLEXIBILITY
 TRINA GRIFFIN, LEGISLATIVE ANALYSIS DIVISION



1


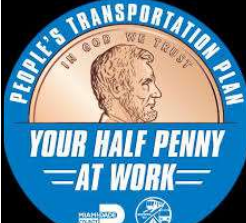
OVERVIEW

- Objective:** Counties seek additional revenue for various capital projects, such as school construction and renovations, infrastructure upgrades, road construction and street improvements, dredging and beach nourishment, and other purposes, such as economic development.
- Issue:** Most counties are not levying their maximum local sales tax authority.
- Reason?**
 - 42 counties can't access a portion of their local sales taxing authority because of use restriction.
 - 34 counties have had failed attempts to enact the unrestricted tax and 24 counties have never attempted to enact the unrestricted tax.
- Proposed Solutions:**
 - Unrestrict a portion of the local sales and use tax.
 - Allow counties to put a specified purpose on the ballot.



2

ARTICLE 43 USE RESTRICTION

- Article 43 of Chapter 105 authorizes a local sales and use tax for financing public transportation systems.
- "Public transportation system" - Any combination of real and personal property established for purposes of public transportation, but does not include streets, roads, or highways.
- Rate of tax varies based on county:
 - 1/2% - Durham, Forsyth, Guilford, Mecklenburg, Orange, and Wake.
 - These counties may only levy 1/2-cent for this purpose; no option to levy 1/4-cent.
 - Counties currently levying are Durham, Mecklenburg, Orange, and Wake.
 - 1/4% - All other counties (94)
 - No counties levying

3

OBJECTIVE #1: SHIFT OR UNRESTRICT UNUSED TAXING AUTHORITY

Recent legislative attempts	These attempts would have done the following:
<ul style="list-style-type: none"> • 2013-2014 Session: H1224 • 2015-2016 Session: H97, S605 • 2017-2018 Session: H333, S166 • 2019-2020 Session: H667, S681 	<ul style="list-style-type: none"> • Create an alternative "restricted use" local sales tax for public education. • Shift unused taxing authority under Art. 43 to Art. 46, which would provide additional general purpose revenue. • Provide a combination of both, with a maximum rate limitation.

4

REFERENDUM	<p>BALLOT QUESTION RESTRICTION</p> <ul style="list-style-type: none"> ▪ Article 46 authorizes levy of 1/4-cent local sales and use tax if approved in a referendum; 42 counties levy this tax. ▪ Ballot question is set in statute and cannot be modified without legislation. ▪ Current question does not specify purpose and, therefore, tax proceeds may be used for any public purpose.
<p>One Quarter Cent Sales Tax</p>	
<p>Local sales and use tax at the rate of one-quarter percent (0.25%) in addition to all other State and local sales and use taxes.</p> <p><input type="radio"/> For</p> <p><input type="radio"/> Against</p>	

5

OBJECTIVE #2: SPECIFY BALLOT QUESTION

Recent legislative attempts to provide specified purpose in ballot question:	Examples of desired purposes:
<ul style="list-style-type: none"> • 2013-2014 Session: 3 local bills • 2015-2016 Session: 5 local bills • 2017-2018 Session: 6 local bills • 2019 Session: 10 local bills 	<ul style="list-style-type: none"> • Public education/school construction • Infrastructure upgrades/maintenance • Beach nourishment/dredging • Road construction/street improvements • Economic development • Public safety

6

POLICY QUESTIONS: USE RESTRICTION ISSUE



Do you want to want to "unrestrict" a portion of the currently authorized local sales tax rate?

- Who would benefit? >> The 42 counties that are already levying the 1/4-cent under Article 46.
- What are the options?
 - Shift taxing authority to Art. 46 to be used for any general purpose.
 - Create additional restricted use taxing authority, e.g. , new local sales tax article for education purposes.
 - Do both and give counties the ability to choose.

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POLICY QUESTIONS: USE RESTRICTION ISSUE



Do you want to keep the current maximum rates? Do you want to provide same maximum for all counties?

- 6 counties can levy 2.75%; 94 counties can levy 2.5%. Durham and Orange are at the maximum and would not have any additional authority if current maximum maintained.
- Forsyth and Guilford could levy additional 1/2-cent if use restriction removed, but all other counties could only levy add'l. 1/4-cent. (But note that Forsyth and Guilford are not levying 1/4-cent under Art. 46).

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POLICY QUESTIONS: BALLOT QUESTION



Do you want to allow a specified purpose on ballot?

- If so, should counties be able to designate a specified purpose or should General Assembly identify a list of permissible purposes from which counties may choose?
- How should those purposes be defined?



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POLICY QUESTIONS: BALLOT QUESTION



Do you want to create any limitations or oversight mechanisms if there is a specified purpose on the ballot?

- Require that counties use funds only for stated purpose through non-supplant language or other earmarking?
- Require reporting of the use of funds?
- Require (or allow) a sunset?
- Provide a process for modifying specified purpose after tax has been levied?

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WHAT IS THE GOAL?

- To provide counties with more revenue?
- To make it easier to enact the tax?
- To provide more transparency to voters?
- To hold counties more accountable?



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GEORGIA

- LOST – Local Option Sales Tax
- SPLOST – Special Purpose Local Option Sales Tax
- ESPLOST – Educational Special Purpose Local Option Sales Tax
- TSPLOST – Transportation Special Purpose Local Option Sales Tax
- MOST – Municipal Local Option Sales Tax
- HOST – Homestead Option Sales Tax



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QUESTIONS?

Tax and Finance Provisions with Sunsets
Presented to the Revenue Laws Study Committee on March 11, 2020

SUNSET DATE	TOPIC	HISTORY	PROPOSED ACTION
105-237.1(a)(6) Sunset date: July 1, 2020	Compromise of Liability	When the General Assembly expanded the sales tax base to include new transactions that had not been historically subject to sales tax, it created a grace period to allow the Secretary to compromise a taxpayer's liability for a collectible tax. The purpose was to give taxpayers time to be educated. The grace period that expires July 1, 2020, applies to prepaid meals, admission charges, and aviation gasoline & jet fuel. A similar grace period applicable to RMI services and service contracts expires December 31, 2022.	Allow the provision to sunset. The Department has not seen an issue with these three types of taxable transactions.
105-275(7a) Sunset date: July 1, 2021	Property Classified and Excluded from the Tax Base	This provision excluded from property tax a contiguous tract of commercial property that is significantly damaged for fire or explosion and donated to a nonprofit corporation. The exclusion was enacted for an issue specific to the Town of Garner and the ConAgra plant in Garner that was damaged significantly as a result of a fire or explosion in June 2009.	Allow the provision to sunset. The exclusion is no longer needed because the property has been sold.
105-277.9A Sunset date: July 1, 2021	Reduced Assessment for Improved Property in Certain Roadway Corridors	This provision taxed improved property at 50% of its appraised value if the property was located within a transportation corridor marked on an official map, as provided in Article 2E of Chapter 136. The General Assembly enacted the provision in 2011.	Allow the provision to sunset. The provision is no longer needed because S.L. 2019-35 repealed the Map Act.

SUNSET DATE	TOPIC	HISTORY	PROPOSED ACTION
<p>105-269.8</p> <p>Sunset date: Taxable year January 1, 2021</p>	<p>Contribution of tax refund to the Cancer Prevention and Control Branch of the Division of Public Health</p>	<p>Individual taxpayers may contribute all or a portion of their State tax refund to the Cancer Prevention and Control Branch of Division of Public Health, DHHS, to be used to provide free or low-cost breast and cervical cancer screenings and follow-up to eligible women in North Carolina. A woman is eligible if she is:</p> <ul style="list-style-type: none"> • Uninsured or underinsured • Without Medicare Part B or Medicaid • Between the ages of 40 – 64 for breast screening services and 21 – 64 for cervical screening services • Has a household income at or below 250% of the federal poverty level. <p>The General Assembly enacted this provision in 2017, and \$323,802 was contributed to the Program through the tax refund checkoff in 2019. The total budget for the Breast Cancer and Cervical control program in both years of the biennium is \$4.5 million. The program's receipts are \$2.9 million, and this amount includes the funds contributed through the tax refund checkoff.</p> <p>https://www.bcccp.ncdhhs.gov/</p>	<p>Extend the sunset for five years, from 2021 to 2026.</p>

SUNSET DATE	TOPIC	HISTORY	PROPOSED ACTION
<p>160A-239.1 City authority July 1,2020</p> <p>153A-210.1 County authority July 1, 2025</p> <p>153A-210.1(a1) County authority for dam repair July 1, 2022</p>	<p>Special Assessment District (SAD) Revenue Bond authority</p>	<p>In 2008, the General Assembly allowed counties and cities to finance certain infrastructure needs through special assessments. The sunsets have been extended several times. SAD financings are rare. Only two towns and one county have used SAD financing since its enactment in 2008. There are no known projects being considered for which this financing is proposed.</p> <p>These bonds are often sold publicly without a rating. The LGC adopted special guidelines for review and approval of these bonds since it generally does not allow its local governments to issue unrated debt. This financing method is generally more expensive and complicated than other methods. It typically incurs higher interest rates and issuance costs and requires the levy and collection of assessments.</p> <p>The projects financed through SAD revenue bonds are usually infrastructure for a new development that does not have a performance history. Developers use the funds to finance and build new infrastructure for their developments, and the public infrastructure eventually is donated to the local government for future maintenance, repair, etc. The developers recoup their costs for the infrastructure as they sell the properties in the development. Although a local government is not legally obligated to make payments on the SAD bonds with funds other than the assessments, the bonds carry the name of the local government.</p>	<p>Align the sunset dates to July 1, 2020.</p> <p>Allow the authority to sunset.</p> <p>The sunset would not affect assessments imposed or to be imposed for projects for which a final assessment resolution has been adopted prior to the effective date of the expiration.</p>