2009-2010
REVENUE LAWS STUDY COMMITTEE

REPORT TO THE 2009
GENERAL ASSEMBLY OF NORTH CAROLINA
2010 SESSION

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*All of the meeting handouts, including Power Point presentations, may be accessed online in PDF format at the Revenue Laws Study Committee website: http://www.ncleg.net/committees/

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

Senator Daniel Gray Clodfelter, Cochair ***Representative Paul Luebke, Cochair***

May 12, 2010

TO THE MEMBERS OF THE 2009 GENERAL ASSEMBLY:

The Revenue Laws Study Committee submits to you for your consideration its report pursuant to G.S. 120-70.106.

Respectfully Submitted,

________________________________ ________________________________

Rep. Paul Luebke, Co-Chair Sen. Dan Clodfelter, Co-Chair

2009-2010

REVENUE LAWS STUDY COMMITTEE

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PREFACE

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 sixteen members, eight appointed by the President Pro Tempore of the Senate and eight appointed by the Speaker of the House of Representatives.[1] Committee members may be legislators or citizens. The co-chairs for 2009-2010 are Senator Dan Clodfelter and Representative Paul Luebke.

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. 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/committees/

In 2002, the General Assembly established a permanent subcommittee under the Revenue Laws Study Committee to study and examine the property tax system.[2] The subcommittee consists of eight members, four appointed by the Senate chair of the

[1] The Speaker of the House of Representatives appointed a ninth legislative member, a non-voting advisory member in 2007, and again in 2009.
[2] S.L. 2002-184, s. 8.

Revenue Laws Study Committee and four appointed by the House chair of the Committee. The subcommittee may recommend changes in the property tax system to the full Committee for its consideration in its final report to the General Assembly. The Property Tax Subcommittee has not met since 2004.

COMMITTEE PROCEEDINGS

The Revenue Laws Study Committee met five times after the adjournment of the 2009 Regular Session of the 2009 General Assembly on August 11, 2009. Appendix B contains a copy of the Committee's agenda for each meeting. All of 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 of 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.

REVIEW OF THE RECOMMENDATIONS MADE TO THE 2009 GENERAL ASSEMBLY

The 2009 General Assembly enacted six of the Revenue Laws Study Committee's six legislative proposals in whole or in part. Appendix C lists the Committee's recommendations and the action taken on them in 2009. A document entitled "**2009 Finance Law Changes**" summarizes all of the tax legislation enacted in 2009. It is available in the Legislative Library located in the Legislative Office Building. It may also be viewed on the Legislative Library's website: http://www.ncleg.net/LegLibrary under 'Studies and Reports,' 'Tax Law Changes (1996 – 2009)'.

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 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. The current reference to the Code is May 1, 2009. Since that date, Congress has enacted five pieces of legislation that made changes to the Code. This federal legislation includes the Worker, Homeownership, and Business Assistance Act of 2009, Acceleration of Income Tax Benefits for Haiti Relief, the Patient Protection and Affordable Care Act, the Health Care and Education Reconciliation Act[5], and the Hiring Incentives to Restore Employment (HIRE) Act.

The Committee considered the changes made in the Patient Protection and Affordable Care Act, as amended by the Reconciliation Act, and the HIRE Act that would impact federal taxable income. Congress enacted the first four provisions summarized below as part of the Patient Protection and Affordable Care Act. Congress enacted the last provision as part of the HIRE Act.

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[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.

[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."

[5] This Act served as a 'sidecar' bill that allowed amendments to the Patient Protection Act to be passed by the Senate with only 51 votes using the budget reconciliation rules.

- Effective January 1, 2013, the threshold for unreimbursed medical expenses will increase from 7.5% to 10% of adjusted gross income.[6] Individuals age 65 and older are temporarily exempt from the increase; it would apply to seniors effective January 1, 2017.
- Effective January 1, 2011, the definition of 'qualified medical expenses' for purposes of Flexible Spending Accounts, Heath Spending Accounts, and Health Reimbursement Accounts will be modified to conform to the definition of that term for purposes of the medical expense itemized deduction. This modification means that over-the-counter medicines will not be covered unless they are prescribed by a health care professional. Effective January 1, 2013, the amount a person may contribute to a Flexible Spending Account plan will be limited to $2,500, indexed annually after that year. There is no limit under current law, although some employers may limit the amount that may be set aside.
- Effective January 1, 2011, a health insurer provider may not deduct the amount paid to an employee to the extent the remuneration exceeds $500,000 unless the premium income paid to the insurer meets minimum essential coverage requirements.
- Effective January 1, 2010, an employer may be eligible for the payroll tax exemption. The payroll tax exemption provides employers with an exemption from the employer's 6.2% share of social security tax on wages paid to a qualifying employee, effective for wages paid from March 19, 2010, through December 31, 2010. A qualified employee is one that is hired between

[6] Approximately 6% to 8% of North Carolina taxpayers claim the medical expense deduction on their income tax return.

February 3, 2010, and January 1, 2011, and who was either unemployed during the 60 days prior to starting work or worked fewer than 40 hours for someone else during the 60-day period.

The Committee did not discuss the changes made by the Worker, Homeownership, and Business Assistance Act of 2009 or the acceleration of income tax benefits for Haiti Relief. These two acts made the following changes that may impact federal taxable income:

- The Worker, Homeownership, and Business Assistance Act of 2009 allows a taxpayer election to extend to five years the carryback period for net operating losses incurred in 2008 or 2009, and it extends the tax exclusion for payments made under the Department of Defense Homeowners Assistance Program to certain military and civilian employees in connection with base closures.
- P.L. 111-126 allows an individual who made a monetary donation to a qualified charitable organization for Haiti relief after January 11, 2010, and before March 1, 2010, to claim the contribution as a charitable deduction on a tax return for either 2009 or 2010.

In deciding whether to conform to the federal changes, the Committee balanced the benefits of conformity, which include improved compliance, tax simplicity, and ease of administration, against the General Assembly's responsibility to provide the necessary revenues to support the State's budget. The cost of conforming to the NOL provisions of the HIRE Act is significant, and the changes made by the act may have impacted the 2009 federal taxable income of some taxpayers. The cost of conforming to the other changes is minimal for the first couple of years because several of the changes have delayed effective dates. The Committee recommends the General Assembly conform to the federal changes. Legislative Proposal 1, *IRC Update*, updates the Code reference to May 1, 2010.

ESTATE TAX

North Carolina imposes a state estate tax on the estate of a decedent when a federal estate tax is imposed on the estate. Effective January 1, 2010, the federal estate tax is repealed for one year. Consequently, North Carolina's estate tax is also repealed for one year. The Fiscal Research Division of the General Assembly estimates an $85 million loss of revenue associated with this repeal to the General Fund for fiscal year 2010-2011.

In 2001, Congress enacted the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). That law made significant changes to the federal estate tax law[7], culminating in the repeal of the tax for one year in 2010.[8] Most people did not anticipate that Congress would let the estate tax expire. In April 2009, Congress approved a Fiscal 2010 Budget Resolution that called for extending the federal estate tax into 2010. On December 12, 2009, the The House of Representatives passed HR 4151. That bill would have made permanent the $3,500,000 exemption amount and the 45% maximum tax rate. The Senate did not pass the legislation; hence the expiration of the estate tax for 2010.

Not only is the existence of North Carolina's estate tax law tied to the federal estate tax law, but also the amount of the State's estate tax. North Carolina repealed its inheritance tax in 1998, effective for deaths occurring on or after January 1, 1999, and

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[7] EGTRRA increased the exclusion amount exclusion amount from $675,000 to $1,000,000. This change does not sunset. It gradually increased the exclusion amount from $1,000,000 in 2002 to $3,500,000 in 2009. It also gradually reduced the maximum estate tax rate from 55% in 2001 to 45% in 2009.

[8] The Act provided that the changes made by EGTRRA would expire on December 31, 2010, and the tax law would be applied as if the provisions and amendments made by the legislation had never been enacted.

replaced it with an estate tax that is equivalent to the state estate tax credit allowed on a federal estate tax return. This type of state estate tax is known as a "pick up" tax because it picks up for the state the amount of federal estate tax that would otherwise be paid to the federal government. As part of EGTRRA , Congress phased out the state estate tax credit over a four-year period, beginning in 2002.[9] Although North Carolina conformed to the increased exemption amounts enacted in EGTRRA, it did not conform to the phase out of the estate tax credit. The amount of the estate tax in North Carolina is the amount of the state estate tax credit that would have been allowed under the Code as of December 31, 2001.[10]

The uncertainty at the federal level creates uncertainty at the state level as well. The Revenue Laws Study Committee discussed the possible legislative outcomes at the federal level and their impact upon North Carolina. The Committee realized it had several options before it: it could continue to base the State estate tax upon the federal estate tax; it could replace the current estate tax with an independent State estate tax; it could repeal the State estate tax; or it could wait and see what Congress does. The Committee chose not to recommend any legislation on the issue at this time.

If North Carolina does not adopt any legislation on this issue this year, then based upon the definition of the term "Code" under G.S. 105-228.90[11], the federal estate tax law as it existed on December 31, 2001, will be reinstated for purposes of North

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[9] It phased out the state estate tax credit over a 4-year period by decreasing the amount of the credit by 25% in 2002, 50% in 2003, 75% in 2004, and repealed the credit for 2005. Effective January 1, 2005, the credit was replaced by a deduction whose benefit depends on the size of the estate and the estate tax bracket.

[10] S.L. 2002-126, Section 30C.3; S.L. 2003-284, Section 37A.4; and S.L. 2005-144, Section 8.1.

[11] G.S. 105-228.90 defines the term "Code" for purposes of North Carolina's tax laws as the "Internal Revenue Code as enacted as of May 1, 2009". *Legislative Proposal #1* of this Report changes the date from May 1, 2009, to May 1, 2010. However, this change does not affect the analysis of the law for purposes of the estate tax because either date encompasses an edition of the Code that contains a reinstatement of the estate tax on January 1, 2011.

Carolina's estate tax law. The reinstatement means that the State estate exemption amount for the estates of decedents dying on or after January 1, 2011, will be $1,000,000 and the amount of the State estate tax will be the amount of the state estate tax credit allowed under the Code on December 31, 2001.

Although it is impossible to predict what Congress will do, there are generally four possible legislative outcomes:

- Congress could either permanently or temporarily extend the estate, gift, and generation-skipping transfer (GST) tax law that was in effect in 2009. If Congress exercises this option after the General Assembly adjourns the 2010 Session, then North Carolina's exemption amount of $1,000,000 will be less than the federal exemption amount of $3,500,000.
- Congress could enact legislation that makes permanent, comprehensive changes to the estate, gift, and GST laws. It is uncertain at this time what those changes might be. HR 4151 is one example of the changes being considered in Congress. That legislation would not have reinstated the state estate tax credit. If Congress exercises this option, the State may want to revisit how it calculates the state estate tax.
- Congress could do nothing, in which case the estate and GST taxes, and the state estate tax credit, will be reinstated in 2011 in the same form they existed in 2001.
- Congress could permanently repeal the estate tax.

The Committee noted that many wills and trust agreements include formula provisions to determine what amounts of the estate will pass to different beneficiaries or to trusts for the benefit of different beneficiaries. These formula provisions are usually based upon the estate and generation-skipping transfer tax laws applicable at the time of the decedent's death. With the repeal of the federal estate law for the year 2010, these provisions could result in a devise contrary to the decedent's intent. For example, a will or trust agreement could include a formula provision allocating the largest amount or percentage of the testator's estate that can pass free of estate tax to a "Family Trust" for the benefit of the testator's children and the remainder of the estate to a "Marital Trust" for the benefit of the testator's surviving spouse. Under the current law, it is possible that this kind of provision would result in the entire estate passing to the Family Trust and nothing passing to the Marital Trust. Legislative Proposal #2, *Construction of Wills and Trusts*, addresses this issue by providing that a will or trust agreement that refers to the federal estate and GST tax laws is deemed to refer to the law as it existed on December 31, 2009, unless the document clearly manifests an intent that a contrary rule apply. The proposal would become effective when it becomes law and apply to the estates of decedents who die after December 31, 2009, and to trusts created by settlers who die after December 31, 2009.

The Committee also noted that one consequence of the estate tax repeal is that the basis of property acquired from a decedent who dies in 2010 will not be stepped up to the value of the property at the time of the decedent's death. Instead, an heir's basis in the property will be the lesser of the decedent's basis in the property or the value of the property at the time of the decedent's death. The current law does provide that the assets of every decedent's estate is eligible for up to $1,300,000 increase in basis and some assets passing to a surviving spouse will be eligible for an additional $3,000,000 increase in basis.[12]

[12] The executor of the estate will have to take affirmative action to obtain this stepped-up basis.

BUSINESS TAX INCENTIVES

In the wake of a review of economic incentives by the Joint Finance Committee, which was part of a broader examination of ways to modernize our tax structure, several questions arose regarding the reporting and sunset provisions of tax credits and, to a lesser extent, sales tax incentives. The members expressed an interest in further review of these questions. Given that the Revenue Laws Study Committee has traditionally served as the forum for the review of tax credits, the Chairs of the Joint Finance Committee referred the questions to the Revenue Laws Study Committee for review. The specific questions raised concern about the extent to which information that is required to be reported is available, the extent to which the information is uniform, and why most, but not all business incentives that are tax credits have a statutory sunset.

On March 31, 2010, the Committee heard two presentations regarding features of the State's business tax incentives that aid in tracking their use and considered draft legislation that would make the various incentives more uniform in that regard. The incentives covered by this review included the following:

- Article 3A: Tax Incentives for New and Expanding Businesses
- Article 3B: Business and Energy Tax Credits
- Article 3C: Tax Incentives for Recycling Facilities
- Article 3D: Historic Rehabilitation Tax Credits
- Article 3E: Low-Income Housing Tax Credits
- Article 3F: Research and Development
- Article 3G: Tax Incentives for Major Computer Manufacturing Facilities
- Article 3H: Mill Rehabilitation Tax Credit
- Article 3J: Tax Credits for Growing Businesses

- Article 3K: Tax Incentives for Railroad Intermodal Facilities
- Credit for North Carolina State Ports Authority wharfage, handling, and throughput charges[13]
- Credit for qualifying expenses of a production company[14]
- Credit for manufacturing cigarettes for exportation[15]
- Credit for manufacturing cigarettes for exportation while increasing employment and utilizing State Ports[16]

A review of the incentives, as currently enacted, revealed discrepancies with respect to the following: (i) whether a report was required, (ii) whether the required report had to be itemized by the taxpayers claiming the credit and, where appropriate, by credit, (iii) whether the incentive had a sunset provision, (iv) who the reporting entity was, and (v) for sales and use tax refunds, the annual period the refund covered. Further, the review of the reports revealed that each incentive has a discrete report, but no unified report exists that consolidates the information. With the exception of sales and use tax exemptions, which present unique reporting burdens because the Department of Revenue has no means of tracking exempt transactions, the Committee recognized the benefits of having more information in an easily accessible format and of periodically reviewing economic incentives to better ensure that they are serving the purpose of generating investment, rehabilitation, and job creation within the State.

The Committee found that the advantages of these requirements, which include the increased availability of pertinent information and the ability to periodically review the efficacy and policy underpinnings of each incentive, outweighed the disadvantages

[13] G.S. 105-130.41 and G.S. 105-151.22
[14] G.S. 105-130.47 and G.S. 105-151.29
[15] G.S. 105-130.45
[16] G.S. 105-130.46

of implementation, such as the increased cost associated with more detailed reporting and increased legislative review burdens. Accordingly, the Committee recommended Legislative Proposal #3, *Economic Incentives Alignment and Changes*. The proposal would make the following six changes with regard to business incentives:

1. Implement reports for the following incentives that do not currently have a reporting requirement:
    - Article 3H for rehabilitations for mill property.
    - Sales and use tax refunds for analytical services, railroad intermodal facilities, and vehicle parts for motorsports bodies.
2. Uniformly require the reporting of incentives broken down by taxpayer for the following:
    - Article 3B for business and energy tax credits.
    - Article 3D for rehabilitations of historic structures.
    - Article 3E for low-income housing.
3. Require the reporting of incentives broken down by credit for Article 3B for business and energy tax credits.
4. Enact sunset provisions for incentives that do not currently have them, as follows:
    - Article 3C for recycling facilities was given a sunset of 2018.
    - Article 3D for historic rehabilitations was given a sunset of 2014.
    - The sales and use tax refund for major recycling facilities was given a sunset of 2018.
    - The sales and use tax refund for low-tier machinery was given a sunset linked to the sunset for Article 3J for growing businesses.

- The sales and use tax refund for analytical services was given a sunset of 2013.
- The sales and use tax refund for railroad intermodal facilities was given a sunset of 2038, which is the same sunset as the tax credit for railroad intermodal facilities.
- The sales and use tax refund for motorsports bodies for vehicle parts was given a sunset of 2014.

5. Set the annual period for sales and use tax refunds as the State's fiscal year.
6. Require each separate report for the State's economic incentives to be combined into a unified economic incentives report, published annually, with the Department of Revenue being the sole reporting entity.

Legislative Proposal #3 would make two additional changes of note. First, the proposal would separate the sales and use tax refund statute, which is currently in one statutory provision, into three separate statutory provisions: the existing statutory provision for sales and use tax refunds found in G.S. 105-164.14 would remain the provision for sales and use tax refunds enacted for non-economic incentives purposes, a new statutory provision in G.S. 105-164.14A would cover sales and use tax refunds for economic incentives purposes for entities other than industrial facilities, and a final new statutory provision in G.S. 105-164.14B would apply to sales and use tax refunds for economic incentives purposes for industrial facilities. Second, the proposal would eliminate the obsolete incentives found in Article 3G for major computer manufacturers, enacted for Dell, and found in Article 3C for large recycling facilities, enacted for Wisconsin Tissue, as neither of these incentives are currently generating investments for which credits are earned. The proposal would become effective July 1, 2010, would require the first unified economic incentives report by May 1, 2011, and would modify the claims for sales tax refunds so as to hold harmless those who are currently entitled to a refund.

TOBACCO EXCISE TAX

The Revenue Laws Study Committee reviewed two issues concerning the tobacco excise taxes: the taxation of little cigars as cigarettes and the restoration of tax stamps on cigarettes. Although the Committee declined to move forward with a proposal on either of these issues, several members expressed their interest in continuing the Committee's study of these issues.

Little cigars are a fast growing segment of the tobacco industry. Many packages of little cigars cannot be distinguished from cigarettes and are marketed as cigarettes. Currently categorized and taxed by the State as other tobacco products, the tax on packages of little cigars is less than the tax on packages of cigarettes. The average tax on a pack of little cigars is 32¢, whereas cigarettes are taxed at 45¢ per pack.

Twelve states and the federal government tax little cigars as cigarettes. The federal tax treatment of little cigars as cigarettes went into effect on April 1, 2009 when the federal definition of little cigars was amended to include cigars "not weighing more than three pounds per thousand."[17] The Committee noted that contemporaneous with the change in the federal definition of little cigars, manufacturers increased the weight of their product so that most little cigars now weigh more than three pounds per thousand. Based upon this experience at the federal level, the Committee could not determine how to effectively differentiate little cigars from cigarettes. The Committee understands that the federal government, as well as other states, are continuing to study this issue. The Committee hopes to renew its discussion of this issue in the future.

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[17] 27 C.F.R. 40.11.

North Carolina first began taxing cigarettes in 1969. The law required tax stamps to be attached to packages of cigarettes as evidence of payment of the tax. In 1993, the General Assembly repealed the tax stamp requirement; payment of the tax was recorded by reports submitted by cigarette distributors. At the time of the tax stamp repeal, four other states did not require tax stamps: Alaska, Hawaii, Michigan, and North Dakota. Since the repeal of the North Carolina tax stamp, Michigan, Hawaii, and Alaska have enacted cigarette tax stamp requirements and South Carolina has repealed its tax stamp requirement, effective in 1997.

The combination of a relatively low cigarette excise tax nationally[18] and no tax-stamping requirement creates a climate conducive for smugglers to purchase cigarettes in North Carolina for resale in other parts of the country. The combination of a relatively high excise tax when compared regionally[19] and lack of a stamping requirement also creates a climate conducive for smugglers to import cigarettes into North Carolina from neighboring states. With these findings in mind, the Committee considered a proposal at its May 5, 2010, meeting to restore the cigarette tax stamp.

Several members expressed concerns about the cost that a stamping requirement would have on small distributors. Although many cigarette distributors located in North Carolina have the specialized equipment needed to attach the stamps to packages of cigarettes, the Department of Revenue estimates that 25 distributors would need to purchase machines.[20]

At the time of the original enactment, a discount of 7/24¢ per stamp was given for the expenses associated with the stamps, which resulted in a discount of

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[18] North Carolina's tax of 45¢a pack is the eighth lowest rate in the country.

[19] North Carolina's tax of 45¢ a pack is higher than the rate in Georgia, Virginia, and South Carolina. South Carolina has the lowest rate in the country at 7¢ a pack.

[20] There are approximately 165 distributors in North Carolina. Most of these distributors operate in a state that already imposes a tax-stamp requirement.

approximately 5¢ per carton. With the elimination of the tax stamp in 1993, the calculation of the discount was amended from a per stamp calculation to a percentage of the tax due. The General Assembly repealed the 4% discount in 2003; then reinstated it in 2004 at a reduced rate of 2%. With the recent increase in the tax rate on cigarettes, the 2% discount currently results in a discount of 18¢ per carton. The loss to the General Fund from the discount allowed to cigarette distributors in fiscal year 2008-2009 was $5.6 million.

A motion to adopt the proposal for consideration by the 2010 Session of the 2009 General Assembly failed. The majority of the members did not believe the benefits to be gained by imposing a tax stamp requirement outweighed the costs of such a requirement on small distributors. Although the discount may help cover ongoing costs of stamping, members expressed concern about the large, initial acquisition cost of the necessary specialized equipment that would be needed by the small distributors that do not currently have the equipment.

ADMISSIONS TAX

Internet Resale of Tickets

The Revenue Laws Study Committee considered the issue of taxing the resale of tickets last year,[21] but did not make a recommendation to the 2009 General Assembly. Prior to 2008, the resale of admission tickets for more than $3.00 above face value was a criminal misdemeanor. Because the transaction was prohibited, it was not addressed by the tax laws. In 2008, the General Assembly recognized the growth of the Internet ticket resale industry, through outlets like StubHub, as a legitimate business model and authorized the activity as long as the reseller provides the purchaser with a guarantee. Face-to-face resales of tickets for more than $3.00 above face value are still prohibited.

[21] January 7, 2009, meeting.

When the 2008 legislation was being considered by the Senate, it included a provision extending the admissions tax to a reseller's markup. However, the House removed the taxing provision when it considered the bill and, in its place, added a sunset of June 30, 2009. During the interim prior to the 2009 General Assembly, the Revenue Laws Study Committee examined three possible options with regard to addressing the taxation of ticket resales. The first option was to not tax the resale. The second option was to impose the admissions tax on a person engaged in the business of reselling tickets over the Internet. The third option was to repeal the admissions tax and impose the State and local sales tax on the price of tickets. However, the Committee was unable to reach a conclusion. During the 2009 Regular Session, the General Assembly removed the sunset on the authorization to resell tickets over the Internet, but did not address the taxation issue.

At its February 3, 2010, meeting, the Committee revisited this issue. The Committee was reminded that the current law imposes a 3% privilege tax on a person engaged in the business of giving, offering, or managing a form of amusement or entertainment. This tax is referred to herein as the "admissions tax." The tax applies to the person, not the transaction. Ticket resales are not subject to the tax because the secondary seller is not giving, offering, or managing the amusement. The Committee was offered several policy arguments for and against imposing the tax on resales. Imposing the tax would make the application of the tax more consistent with its purpose, which is to tax the price a person pays to attend a live event. It would equalize the treatment of primary and secondary sellers. It would deter tax avoidance by establishing a system that discourages primary ticket sellers from setting up subsidiaries to resell their own tickets to avoid paying the tax. Finally, imposing the tax would modernize one of North Carolina's oldest taxes by acknowledging the current business models for selling tickets. Opponents of extending the tax argue that additional taxes in a lagging economy will slow sales. They also argue that resellers are providing a service rather than providing the sale of an admission, and therefore, the admissions tax is not the appropriate tax to apply.

Ultimately, the Committee supported the arguments in favor of extending the tax to resales and concluded that the admissions tax should be modernized to reflect current business models that are widely accepted for the sale and resale of tickets. Based upon these conclusions, the Committee recommended Legislative Proposal #6, *Modernize Admissions Tax and Restore Amenities Exclusion*, which would extend the 3% admissions tax to the gross receipts of a person engaged in the business of reselling tickets on the Internet as authorized by North Carolina law. The tax would be imposed on the difference between the face value on the ticket and the price sold by the reseller.

Amenities

The Committee considered another issue related to the application of the admissions tax. On January 30, 2009, the Department of Revenue reversed its longstanding interpretation of the admissions tax statute by declaring that amenities bundled with the sale of an admission ticket are subject to the admissions tax. Taxpayers were given one day's notice of the change, and no explanation was offered for the change in interpretation. Because the admissions statute does not specifically address how amenities are to be taxed and given the Department's reversal of a previously issued written opinion, the Revenue Laws Study Committee decided to review this issue.

The Committee was provided with the following background information: In 1994, a taxpayer requested a written opinion from the Department as to whether the admissions tax applied to amenities frequently purchased with an admission ticket, such as parking privileges, access to special concession stands, and access to special attendants. The Department responded that amenities are excludable from the admissions tax. While the opinion was not embodied in a formal directive, the contents reflected the Department's interpretation of the law and were understood as such among venues subject to the tax. Fifteen years later, the Department issued a directive, effective the following day, stating that amenities are subject to the tax.

While recognizing that there are policy arguments both for and against imposing the admissions tax on amenities, the primary conclusion reached by the Committee was that it is the role of the Legislature to determine whether a good or service is subject to tax, and that this type of substantive determination should not be made through interpretive rulings. The Committee also concluded that the notion of settled law is important to the State's business climate wherein businesses establish their models based on interpretations provided by agencies charged with applying the law, and they should be able to rely on those interpretations, absent legislative change. Finally, the Committee also expressed concern over the lack of notice given to taxpayers by the Department.

Based on these conclusions, the Committee recommended Legislative Proposal #4, *Modernize Admissions Tax and Restore Amenities Exclusion*. The proposal does the following:

- It restores the Department of Revenue's pre-2009 interpretation of the admissions tax statute to exclude charges for amenities that are bundled with a ticket purchase.
- It requires the Department of Revenue to provide ample notice to taxpayers when it issues an interpretation that revises a prior

interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due.

SALES AND USE TAX

As technological advancements continue to impact the way business is conducted, states must revisit their tax laws to determine whether they, in fact, tax transactions that are intended to be taxed or whether they need to be modified to adapt to modern business models. As the permanent legislative study committee established to review the State's revenue laws, the Revenue Laws Study Committee regularly undertakes this task. Last year, for example, the Committee recommended amending the sales and use tax statutes to include digital property, such as downloaded music and books, in the sales tax base, because their tangible counterparts are subject to tax and digital property did not exist when the statutes were originally enacted.

A similar situation exists with regard to the taxation of accommodations booked through a third party intermediary that operates over the Internet. The business model currently used by Internet travel companies, such as Travelocity, Expedia, and Orbitz, did not exist when the sales tax on accommodations was originally enacted. A relatively recent concept, this model has gained increasing popularity over the last ten years. With regard to tax collection and remittance obligations related to accommodations, the current sales tax statute and local occupancy tax ordinances speak only to operators of the accommodations. They do not address the taxability of charges collected by an online travel company (OTC) since the OTC is not the provider or operator of those accommodations. The issue of whether OTCs are required to collect and remit sales and occupancy taxes on their markup or other service charges is at the forefront of over 40 ongoing lawsuits brought mostly by local governments across the country. At the heart of these lawsuits is the belief that local governments are not receiving the total amount of tax revenue due on these transactions. This issue was among the local governments' top legislative agenda items this year. Given the tax policy implications and the desire for clarification sought by both local governments and the lodging industry, the Committee undertook a study of this issue.

At its January 6, 2010, meeting, the Committee heard a presentation that explained the business models used by this industry, highlighted several of the lawsuits and administrative proceedings throughout the country, summarized the arguments put forth by the local governments and the OTC industry in these suits, reviewed the applicable North Carolina law and cases, and noted current legislative activity at the federal level and in other states.

The Committee learned that an OTC typically uses a "merchant model," under which the OTC contracts with an accommodations provider for the right to broker or facilitate the reservation of rooms and pays the provider a discounted room rate. The OTC lists the rooms on its website at a higher rate, which includes a number of additional fees. One of the fees is a "tax recovery charge," which is described by one OTC as "the amount we expect the relevant hotel to charge for any applicable taxes, governmental charges, and other charges." When an OTC remits to the provider funds for the payment of taxes, it calculates the tax based on the discounted room rate that it paid the provider rather than the rate the OTC charged the customer. It is this calculation that is at the center of debate. Many local governments assert that OTCs are obligated, either by state statute or by local ordinance, to remit sales and occupancy tax based on the price charged to the customer, including the OTC's additional facilitation, service, and processing fees. The OTCs assert that the plain language of the applicable statute or ordinance does not require them to collect tax on the transaction between itself and the customer, but only on the transaction between itself and the provider.

The Committee observed that the court decisions across the country have been mixed because the outcomes turn on the judicial interpretation of the applicable statutes and ordinances, the wording and terminology of which vary from state to state. Moreover, most of the cases have not yet exhausted the judicial process. However, the Committee noted that in 2009 the 4th Circuit, which controls in North Carolina, held in *Pitt County v. Hotels.com* that an OTC does not meet the statutory definition of a "retailer" because it is not a hotel operator and, therefore, is not required to collect occupancy tax on its markup.

After examining the OTC business model, the Committee found that, for business reasons and not necessarily for tax reasons, OTCs purposefully obfuscate their pricing. When a customer pays for a room using an OTC, the customer has no way of knowing how much the OTC paid the hotel for the room (the "discounted room rate"), how much the OTC charged for its facilitation services in making the room listings available on their website, how much the OTC paid the hotel for state and local taxes, or how much the OTC charged as a service fee to process the reservation. All of these items are bundled together rather than being itemized. To some degree, hotels are willing participants in this obfuscation because their contracts typically require that the discounted room rate remain confidential. Regardless of how an OTC structures its business model or how it internally chooses to distinguish the rental of a room from the service it provides in facilitating the reservation, a customer's common understanding of this transaction is that the amount he or she pays an OTC is the equivalent of the cost of the room, plus tax.

The Committee concluded that the final price paid by the customer for the rental of an accommodation is the price upon which State and local sales tax and local occupancy tax should be based rather than a "discount rate" of which only the lodging and the OTC have knowledge. In developing a proposal to effectuate this conclusion, the Committee thought it should reflect common understanding and minimize the overall administrative burden. Currently, only operators of accommodations are required to collect and remit tax on those accommodations. Because operators are already "retailers" for purposes of the sales tax laws, they are in the best position to remit the applicable tax, as opposed to requiring third party intermediaries, who are not "retailers" under current law and are, for the most part, located outside the State, to remit the tax to the State as well as the numerous local taxing jurisdictions. However, in order for the providers to remit the full amount of tax, they need to know the final sales price charged by the OTC, information they are currently not provided.

With these factors in mind, the Committee recommended Legislative Proposal #5, *Modernize Sales Tax on Accommodations*. The proposal would require any person, including an OTC, who is authorized by a provider of accommodations to facilitate the rental of and to collect payment for an accommodation to report to the provider the final sales price charged to a consumer for the purpose of determining the amount of State and local sales and occupancy tax due. Under the proposal, a "facilitator" would only become liable for the tax due if it fails to report or underreports the final sales price to the provider. The proposal relies on traditional sales tax concepts to determine the amount of tax due. The definition of sales price, which is used in all of the Streamlined states, includes all charges necessary to complete the sale. For tangible items, this includes charges for delivery and installation. By applying this definition to the transaction between an OTC and the consumer, any charges that are included in the price to the consumer, other than taxes, are subject to the sales tax. By recommending this proposal, the Committee acknowledged that retailers should not be able to avoid the application of the sales tax by denominating part of the price as the price for the good and another as expense recovery. The proposal also provides that the rental of transient accommodations, whether through the provider directly or through the use of a facilitator, is sourced to the location of the accommodation.

TAX AND DEBT COLLECTION

The Revenue Laws Study Committee recommended legislation that would improve the tax and debt collection process for the Department of Revenue. Legislative Proposal 6, *Improve Tax & Debt Collection Process,* is a recommendation of the Department of Revenue and was developed in collaboration with the Office of State Controller and the North Carolina Bankers Association. At the April 21, 2010 Revenue Laws meeting, Kenneth Lay, Secretary of the Department of Revenue, stated that the Department was working on several tax and debt collection proposals that would benefit both the State and local governments by increasing debt and tax collections. One proposal would streamline the attachment and garnishment process, specifically as it applies to accounts of debtors held by financial institutions, by allowing electronic delivery of notice of garnishment and attachment. Currently, delivery of notice of attachment and garnishment is allowed only by mail, a more labor intensive and costly method. Secretary Lay further stated that the Department and financial institutions were working on developing a data match to assist the Department in attaching and garnishing accounts of delinquent taxpayers. Another proposal would allow for collection of delinquent taxes and debts by setoff against payments the State owes to these debtors for services and goods provided to the State by the debtors.

Staff met several times with representatives of financial institutions, the Department of Revenue, and the Office of State Controller to discuss the proposals mentioned by Secretary Lay and other collection process proposals. As a result of these discussions, the following specific changes were agreed upon by the parties and presented at the May 5, 2010, Revenue Laws meeting:

1. Expand the use of the Setoff Debt Collection Act (ACT) by allowing debts owed by a business to be set off against a tax refund to the business, by allowing a setoff against any type of tax refund, and by allowing a community college to submit for setoff debts owed to the college. Currently, the Act only allows setoff against an individual's tax refund.
2. Expand the Statewide Accounts Receivable Program to allow for collection of the following accounts receivable by setoff against payments the State owes to individuals and businesses: accounts that are submitted to the Department of Revenue under the Act and overdue tax debts.
3. Authorize the use of electronic process for sending notice of garnishment if the garnishee agrees to this method and the Department of Revenue and garnishee have an agreement that establishes the protocol for electronic notice.
4. Provide for a data match between the Department of Revenue and financial institutions holding accounts of delinquent taxpayers. There is already an existing data match system between the Department of Health and Human Services and financial institutions to assist in securing child support from absent noncustodial parents.

PROPERTY TAX

The Revenue Laws Study Committee recommended legislation to the 2010 Session of the 2009 General Assembly that would add a third exception to the ownership requirements under the Present-Use Value Program. Legislative Proposal #7, *Expand Exception to PUV Ownership Requirements,* would allow recently acquired land that is not being used for any farm purpose (agricultural, horticultural, or forest purpose) to be appraised at its present-use value if (1) the owner of the recently acquired land already owns land that is in the PUV program and used for agricultural purposes, (2) the owner begins using the recently acquired land for agricultural purposes within one year of its acquisition, and (3) the owner files a timely application. Under current law, recently acquired land is allowed in the PUV program if the recently acquired land is already in the PUV program and the new owner continues to use the land for its present use, or if the recently acquired land is eligible to be in the PUV program and is being used for the same purpose as an existing tract of land in the PUV program that is already owned by the new owner.

MUNICIPAL OWNED COMMUNICATION SERVICES

The General Assembly asked the Revenue Laws Study Committee to study municipal owned and operated communications services.[22] Municipalities are authorized to operate several public enterprises including cable television systems. North Carolina case law provides that the municipal authority to operate a cable television system also includes the authority to offer fiber optic communication services.[23] Several municipalities in North Carolina have recently begun to offer communication services, or have sought financing to offer communication services in the near future. The City of Morganton currently offers a cable system that includes communication services. The City of Wilson and the Cities of Mooresville and Davidson through MiConnection offer fiber optic communication services; they financed these services through the use of certificates of participation. The City of Salisbury also financed the construction of its communication services through certificates of participation.

A unit of local government may issue certificates of participation as part of its ability to enter into installment purchase financing agreements.[24] Under this financing method, a city enters into an installment contract secured by a security interest in the system that is constructed. Unlike the issuance of general obligation bonds, installment purchase financing is not subject to a vote of the people. A certificate of participation is a document setting out the share of the city's debt that is owed to the holder of the certificate. In practice, the holder receives interest and principal payments in a manner similar to interest and principal payments on a bond issued by the borrowing unit. The Local Government Commission must approve a local unit's use of certificates of

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[22] S.L. 2009-574, Section 7.2.
[23] *BellSouth Telecomms., Inc. v. City of Laurinburg,* 168 N.C. App. 75, 606 S.E. 2d 721 (2005).
[24] G.S. 160A-20.

participation, and the unit must give notice and hold a public hearing before it can enter into certificates of participation.

At its April 21, 2010 meeting, the Committee reviewed the public enterprise authority of local governments, the mechanisms available to finance public enterprises, and the tax revenue implications of municipal owned communication services as compared to privately owned communication services. Several interested parties made presentations to the Committee on the issues: the North Carolina Cable Communications Association, Suddenlink Communications, AT&T, the North Carolina League of Municipalities, Walser Technology Group, and EPB Telecom. The private communication providers expressed concern over the financial feasibility of the municipal owned services and the use of financing mechanisms that do not require approval by a vote of the public by municipalities to finance these systems. Advocates for municipal owned communication services expressed concern over the lack of competitive providers of communication services in rural areas of the State.

At its next, and last, meeting on May 5, 2010, Sen. Hoyle sent forward a proposal for the Committee to consider. The proposal, included in this report as Legislative Proposal #8, *No Nonvoted Local Debt for Competing System,* does two things:

- It restricts a local government from using nonvoted debt in the form of certificates of participation for financing communication systems, including cable systems or systems that provide Internet access service.
- It authorizes the Revenue Laws Study Committee to continue its study of local government owned and operated communication services.

Although the Committee members appeared to express unanimous agreement with the continued study of this issue, it debated the first part of the proposal at some length. Upon a divided vote, the Committee chose to recommend Legislative Proposal

#8 to the General Assembly for further consideration during the 2010 Session of the 2009 General Assembly.

VIDEO PROGRAMMING

The Revenue Laws Study Committee recommended legislation to the 2006 Session of the 2005 General Assembly that equalized the taxation of video programming services regardless of how the service is delivered. The General Assembly enacted the proposal as S.L. 2006-151. As part of that legislation, the act replaced locally negotiated franchises of cable service provided over a cable system with a State-issued franchise,[25] it preserved the local government revenue stream[26] by distributing part of the sales tax revenues from telecommunications and video programming services to the counties and cities, and it dedicated a portion of the revenue to support public, education, and government (PEG) channels.

S.L. 2006-151 directed the Committee to review the impact this legislation has had on the following issues:

- Competition in video programming services.
- The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.
- The deployment of broadband in the State.

The Committee asked the cable service providers, the providers of telecommunication services, and the parties interested in this issue to respond to these three issues. Appendix D contains their responses. The service providers noted that the simplified franchising process had enabled them to more quickly develop their fiber optic networks and to deploy service faster. The providers commented that the

[25] Federal law requires the franchising of cable service.
[26] Prior to January 1, 2007, local governments could impose a franchise tax on cable service providers.

registration-only nature of the State-issued franchise eliminated much of the time and expense that had been integral to the locally negotiated franchise process.[27]

Initially, most of the State-issued franchises resulted from the expiration of locally negotiated franchises.[28] In those cases, the service area covered by the franchise generally represented the same service area covered under the expiring franchise. Since November 2008, telecommunication service providers have begun to obtain State-issued franchises and in some cases these providers compete with existing cable service providers.[29] It is unclear what impact the act has had on video programming prices.

The fiber optic network necessary to provide video programming services is the same type of network needed to provide broadband capability. The Committee anticipated that the entry of telecommunication service providers into video programming services would result in an expansion of broadband deployment in the State.[30] The e-NC Authority, established as the Internet access policy planning body of the State[31], plans to issue a report in May or June of 2010 on the status of broadband deployment in North Carolina.

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[27] AT&T began offering video programming services in November 2008. Today it offers services in parts of 18 counties and 79 cities in the Charlotte, Raleigh, and Boone areas. North State began offering services to portions of Davidson, Forsyth, Guildford, and Randolph counties in August 2009. All eight of the companies associated with the NC Telephone Cooperative Coalition, which operate in the most rural areas of 26 counties, have either expanded or initiated video programming services.

[28] The Secretary of State's Office issued 118 State franchises between January 2007 and April 2008. Since April 2008, it has issued 221 franchises, for a total of 339 State-issued franchises.

[29] Cable service providers note that they compete with direct-to-home satellite providers for video programming customers.

[30] Proponents of locally negotiated cable franchises argue that the build-out requirements contained in many of those franchises more effectively accomplished broadband expansion. The FCC found build-out issues to be one of the most contentious issues in the area of video programming and that build-out requirements in local franchise agreements may constitute an unreasonable deterrent to entry into the video programming market. It issued FCC order 06-180 in December 2006 limiting the ability of local franchise authorities to impose build-out requirements.

[31] G.S. 143B-437.46.

The Committee learned that the actual revenues distributed to local governments from the sales tax on telecommunications and video programming services is greater than projected. When the General Assembly enacted the legislation, it anticipated that local governments would receive approximately $71.9 million in fiscal year 2007-08 and approximately $75.3 million in fiscal year 2008-09. The actual revenues distributed to local governments in fiscal year 2007-08 were $72.5 million and $80.3 million in fiscal year 2008-09.

The initial legislation enacted by the General Assembly provided three means of financial support for PEG channels. It required local governments to use any subscriber fee revenue included in the unit's base amount for PEG channel support,[32] and it provided that a local government that used part of its franchise tax revenue in fiscal year 2005-06 for the operation and support of PEG channels had to continue to provide that same level of support in subsequent years.[33] Lastly, the legislation allocated $2 million of the local tax-sharing distribution for PEG support of qualifying PEG channels.[34] The General Assembly anticipated there would be approximately 36 qualifying PEG channels. The legislation provided that $25,000 of this amount would be distributed to each of the qualifying PEG channels and that the remainder would be remitted to the PEG Channel Fund, administered by the e-NC Authority, for matching local grants for PEG channel support. The actual number of qualifying PEG channels totaled 107 for the March 2010 distribution.[35] The Committee questioned the high

[32] G.S. 105-164.44I(c).
[33] G.S. 105-164.44I(e).
[34] A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d).
[35] The number of qualifying PEG channels for the March 2009 distribution totaled 276. The Revenue Laws Study Committee considered this issue in 2008 and found that some of the discrepancy between the projected number of qualifying PEG channels and the actual number was due to confusion on the form used by the Department of Revenue, which may have resulted in some channels being double counted or receiving a distribution when they did not qualify. The Committee recommended clarifying legislation on the issue and the General Assembly enacted the recommendation, S.L. 2008-148.

number of qualifying PEG channels and whether the original $2 million set aside for PEG channel support should be increased to reflect the larger number of qualifying PEG channels, especially since the actual local revenue distribution from the sales tax on telecommunications and video programming services exceeded projections. The Committee did not recommend any changes at this time.[36]

The Consumer Protection Division of the Attorney General's Office is designated as the State agency to receive and respond to consumer complaints regarding cable service provided by a provider who has a State-issued franchise. The Division must report annually to the Revenue Laws Study Committee on the number of customer complaints it has received regarding cable service, the types of complaints, and the different means it has used to resolve the complaints. Appendix E contains its report.

TECHNICAL, ADMINISTRATIVE, AND CLARIFYING CHANGES

The Revenue Laws Study Committee recommends Legislative Proposal 9, *Revenue Laws Technical, Administrative, and Clarifying Changes.* This proposal makes several technical and clarifying changes to the revenue laws and related statutes, including changes to the motor fuel tax and property tax laws. Many of the changes were recommendations of the Department of Revenue.

[36] The report issued by SEATOA states that the deregulation of the state's cable industry has led to under funding of PEG channels which were previously funded by cable operators as a negotiated requirement in local cable franchises. In FCC order 06-180, the FCC limits a local franchise authority's ability to condition the award of a franchise on PEG channel support.

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Revenue Laws Study Committee makes the following nine recommendations to the 2010 General Assembly. Each 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.

1. IRC Update
2. Construction of Wills and Trusts
3. Economic Incentives Alignment and Changes
4. Modernize Admissions Tax & Restore Amenities Exclusion
5. Modernize Sales Tax on Accommodations
6. Improve Tax & Debt Collection Process
7. Expand Exception to PUV Ownership Requirements
8. No Nonvoted Local Debt for Competing System
9. Revenue Laws Technical, Administrative, and Clarifying Changes

LEGISLATIVE PROPOSAL #1

IRC UPDATE

LEGISLATIVE PROPOSAL #1

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2010 REGULAR SESSION OF THE 2009 GENERAL ASSEMBLY

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS.

SHORT TITLE: IRC Update.

PRIMARY SPONSORS: Senator Stein
Representative Luebke

BRIEF OVERVIEW: This proposal would update the reference to the Internal Revenue Code used in defining and determining certain State tax provisions from May 1, 2009, to May 1, 2010. By doing so, North Carolina would conform to the changes made by five federal acts. The five federal acts are as follows:

1) Worker, Homeownership, and Business Assistance Act. (P.L. 111-92)
2) Acceleration of Income Tax Benefits for Haiti Relief. (P.L. 111-126)
3) The Patient Protection and Affordable Care Act. (P.L. 111-148)
4) The Health Care and Education Reconciliation Act. (P.L. 111-152)
5) The Hiring Incentives to Restore Employment (HIRE) Act. (P.L. 111-147)

FISCAL IMPACT: The fiscal impact on the State's General Fund of conforming to all five acts would be a combined loss of approximately $22 million for fiscal year 2010-11.

EFFECTIVE DATE: This act would become effective when it becomes law.

A copy of the proposed legislation, a bill analysis, and fiscal analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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BILL DRAFT 2009-RBxz-53 [v.1] (04/26)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/4/2010 4:00:47 PM

Short Title: IRC Update. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS.

The General Assembly of North Carolina enacts:

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

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

…

(1b) Code. – The Internal Revenue Code as enacted as of ~~May 1, 2009,~~ May 1, 2010, including any provisions enacted as of that date which become effective either before or after that date."

SECTION 2. This act is effective when it becomes law.

Bill Draft 2009-RBxz-53: IRC Update.

2009-2010 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	May 7, 2010
Introduced by:		**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	2009-RBxz-53		

SUMMARY: Bill Draft 2009-RBxz-53 would update the reference to the Internal Revenue Code used in defining and determining certain State tax provisions from May 1, 2009 to May 1, 2010. By doing so, North Carolina would conform to the changes made by five federal acts. This bill would become effective when it became law.

CURRENT LAW: North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the Code.[1] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[2] Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State law tracks federal law. The General Assembly's decision whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made.

BILL ANALYSIS: This proposal would change the reference date to May 1, 2010, effective when the bill becomes law. Changing the reference date to May 1, 2010, would incorporate the changes made in the following acts:

- Worker, Homeownership, and Business Assistance Act. *(P.L. 111-92)*
- Acceleration of Income Tax Benefits for Haiti Relief. *(P. L. 111-126)*
- The Patient Protection and Affordable Care Act. *(P.L. 111-148)*
- The Health Care and Education Reconciliation Act.[3] *(P.L. 111-152)*
- The Hiring Incentives to Restore Employment (HIRE) Act. *(P.L. 111-147)*

The benefits of conformity must be considered in conjunction with the General Assembly's responsibility to provide the necessary revenues to support the State's budget. The benefits of conformity include improved compliance, tax simplicity, and ease of administration. The cost of conformity is approximately $22 million. Most of the revenue loss is associated with the net operating loss provision.

[1] 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.

[2] 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."

[3] This Act served as a 'sidecar' bill that allowed amendments to the Patient Protection Act to be passed by the Senate with only 51 votes using the budget reconciliation rules.

- Effective January 1, 2009, a taxpayer may elect to extend to five years the carryback period for net operating losses incurred in 2008 or 2009. For purposes of North Carolina tax law, this provision only applies to individual filers. Under current State law, corporations must add back net operating losses. This election is similar to the one enacted by Congress in the American Recovery and Reinvestment Tax Act of 2009. Generally, a taxpayer that sustains a net operating loss (NOL) for a tax year generally can take an NOL deduction to reduce income in another tax year. Under ARRTA, a taxpayer may elect to carry back 2008 NOLs for three, four or five years, instead of the normal two years, if the business was an eligible business.[4] The Worker, Homeownership, and Business Assistance Act extend a similar election to all businesses of any size, with the following limitations:
    - Limits the amount of a NOL carried back to the fifth taxable year to 50% of taxable income, except for small business taxpayers with gross receipts of $15 million or less.
    - Limits the election to NOLs incurred in either 2008 or 2009, but not both.
- Effective January 1, 2010, payments made under the Department of Defense Homeowners Assistance Program to certain military and civilian employees in connection with base closures is excluded from taxable income.
- Effective January 1, 2010, an individual who made a monetary donation to a qualified charitable organization for Haiti relief after January 11, 2010, and before March 1, 2010, may claim the contribution as a charitable deduction on the person's tax return for either 2009 or 2010.
- Effective January 1, 2013, the threshold for unreimbursed medical expenses will increase from 7.5% to 10% of adjusted gross income. Individuals age 65 and older are temporarily exempt from the increase; it would apply to seniors effective January 1, 2017. Approximately 6% to 8% of North Carolina taxpayers claim the medical expense deduction on their income tax return.
- Effective January 1, 2011, the definition of 'qualified medical expenses' for purposes of Flexible Spending Accounts, Heath Spending Accounts, and Health Reimbursement Accounts will be modified to conform to the definition of that term for purposes of the medical expense itemized deduction. This modification means that over-the-counter medicines will not be covered unless they are prescribed by a health care professional. Effective January 1, 2013, the amount a person may contribute to a Flexible Spending Account plan will be limited to $2,500, indexed annually after that year. There is no limit under current law, although some employers may limit the amount that may be set aside.
- Effective January 1, 2011, a health insurer provider may not deduct the amount paid to an employee to the extent the remuneration exceeds $500,000 unless the premium income paid to the insurer meets minimum essential coverage requirements.

Effective January 1, 2010, an employer may be eligible for the payroll tax exemption. The payroll tax exemption provides employers with an exemption from the employer's 6.2% share of social security tax on wages paid to a qualifying employee, effective for wages paid from March 19, 2010, through December 31, 2010. A qualified employee is one that is hired between February 3, 2010, and January 1, 2011, and who was either unemployed during the 60 days prior to starting work or worked fewer than 40 hours for someone else during the 60-day period.

[4] An eligible business is defined as a corporation, partnership or sole proprietorship that had average annual gross receipts of no more than $15 million for the tax year of the NOL and the two immediately preceding tax years.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

<u>**FISCAL ANALYSIS MEMORANDUM**</u>

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. <u>This is not an official fiscal note</u>. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: May 10, 2010

TO: Revenue Laws Study Committee

FROM: Jonathan Tart
Fiscal Research Division

RE: IRC Update

FISCAL IMPACT

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2010-11	**FY 2011-12**	**FY 2012-13**	**FY 2013-14**	**FY 2014-15**
REVENUES: ($ millions)					
Extended NOL carryback	(21.4)	3.8	3.4	2.5	1.7
Department of Defense homeowner program	Insignificant Impact based on information obtained from US Joint Committee on Taxation				
Donations to Haiti relief	Insignificant Impact based on information obtained from US Joint Committee on Taxation				
Increase medical expense threshold from 7.5% to 10%	0	0	0	$8.5	$8.8
FSA, HSA changes	Insignificant Impact based on information obtained from US Joint Committee on Taxation				
Exec. Compensation	Insignificant Impact based on information obtained from US Joint Committee on Taxation				
Enhanced Expensing	(1.2)	(.8)	.6	.4	.3
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Effective when it becomes law

BILL SUMMARY: This proposal would update the reference to the Internal Revenue Code used in defining and determining certain State tax provisions from May 1, 2009 to May 1, 2010. By doing so, North Carolina would conform to the changes made by five federal acts. This proposal would become effective when it became law.

CURRENT LAW: North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the Code.[1] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[2] Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State law tracks federal law. The General Assembly's decision whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made.

BILL ANALYSIS:

This proposal would change the reference date to May 1, 2010, effective when the bill becomes law. Changing the reference date to May 1, 2010 would incorporate the changes made in the Worker, Homeownership, and Business Assistance Act, the Acceleration of Income Tax Benefits for Haiti Relief, the Patient Protection and Affordable Health Care Act, the Health Care and Education Affordability Act, and the Hiring Incentives to Restore Employment (HIRE) Act. The changes identified below will have an impact on State revenues.

- Effective January 1, 2009, a taxpayer may elect to extend to five years the carryback period for net operating losses incurred in 2008 or 2009. For purposes of North Carolina tax law, this provision only applies to individual filers. Under current State law, corporations must add back net operating losses. This election is similar to the one enacted by Congress in the American Recovery and Reinvestment Tax Act of 2009. Generally, a taxpayer that sustains a net operating loss (NOL) for a tax year generally can take an NOL deduction to reduce income in another tax year. Under ARRTA, a taxpayer may elect to carry back 2008 NOLs for three, four or five years, instead of the normal two years, if the business was an eligible business.[3] The Worker, Homeownership, and Business Assistance Act extended a similar election to all businesses of any size, with the following limitations:

    - Limits the amount of NOL carried back to the fifth taxable year to 50% of taxable income, except for small business taxpayers with gross receipts of $15 million or less
    - Limits the elections to NOLs incurred in either 2008 or 2009, but not both.

[1] 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.

[2] 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."

[3] An eligible business is defined as a corporation, partnership or sole proprietorship that had average annual gross receipts of no more than $15 million for the tax year of the NOL and the two immediately preceding tax years.

- Effective January 1, 2010, payments made under the Department of Defense Homeowners Assistance Program to certain military and civilian employees in connection with base closures is excluded from taxable income.

- Effective January 1, 2010, an individual who made a monetary donation to a qualified charitable organization for Haiti relief after January 11, 2010, and before March 1, 2010, may claim the contribution as a charitable deduction on the person's tax return for either 2009 or 2010.

- Itemized Deductions: Effective January 1, 2013, the threshold for unreimbursed medical expenses is increased from 7.5% to 10% of income. This will lower the amount of medical deductions that can be taken and increase taxable income by a small amount. This change is waived for individuals 65 and over for tax years 2013 through 2016.

- FSA and HSA Changes: Effective January 1, 2013, the legislation excludes costs for OTC drugs and limits contributions to an FSA to $2,500 per year with COL adjustment. This change will result in a minor increase in taxable income by lowering the amount of eligible pre-tax spending.

- Executive Compensation: Effective January 1, 2013, health insurance providers will be limited in the amount of executive compensation that can be deducted to $500,000 per individual. This will result in a decrease in health provider deductions, resulting in a small increase in taxable income.

- Payroll Exemption: Effective from March 19, 2010, through December 31, 2010, employers are exempt from the employer's 6.2 percent share of social security tax on all wages paid to qualified employees. Qualified employees are individuals who begin employment with a qualified employer after February 3, 2010, and before January 1, 2011, who have been unemployed or employed for less than 40 hours during the 60-day period ending on the date such employment begins, and who are not family members of or related in certain other ways to the employer. This will result in a decrease in the employer's deductions from gross income, resulting in an increase in taxable income. This provision is estimated to have a $4.1 million positive impact on State revenues for FY 10-11. However, since the impact is not dependent on whether the State conforms to the changes made to the Internal Revenue Code, it is not included in the table showing the fiscal impact of the IRC update.

- Enhanced Expensing: The HIRE Act extended through 2010 the increased IRC Section 179 expensing levels. Taxpayers can expense up to $250,000 in purchases of business property that would otherwise be depreciated as long as they don't spend more than $800,000. Without the extension, the expensing limit would have been capped at approximately $130,000 and the phase-out level would be approximately $500,000. The extension of this provision accelerates business deductions, resulting in a decrease in taxable income in the first two years and an increase in taxable income in the next three years.

ASSUMPTIONS AND METHODOLOGY:

Extended NOL Carryback

The methodology used begins with the US Joint Committee on Taxation estimates of the nationwide federal impact by federal fiscal year ((federal fiscal years run from October through September). The national numbers were prorated and an approximate state effective tax rate was applied to arrive at the estimated impact based on the federal fiscal year. Fiscal Research adjusted these numbers to an approximate fiscal impact based on the State's fiscal year. The numbers were also adjusted to take into consideration that the provision would only affect individual filers, since NC does not follow the federal net operating loss for corporate income tax purposes.

Department of Defense Homeowner Assistance Program

The fiscal impact was estimated to be insignificant based on prorating the US Joint Committee on Taxation estimates of the nationwide federal impact and applying an approximate state effective tax rate.

Donations to Haiti Relief

The fiscal impact was estimated to be insignificant based on prorating the US Joint Committee on Taxation estimates of the nationwide federal impact and applying an approximate state effective tax rate.

Increase the Medical Expense Threshold From 7.5% to 10%

Effective on January 1, 2013, the threshold for unreimbursed medical expenses is increased from 7.5% to 10% of adjusted gross income. To estimate the impact of increasing the threshold for the federal deduction would have on North Carolina individual income tax collections, the scenario was entered into the North Carolina Individual Income Tax Model. Increasing the threshold would result in a full fiscal year revenue increase of approximately $21 million in revenues. However, this change is waived for taxpayers 65 years and over for tax years 2013 through 2016. Using IRS SOI data, approximately 60% of the medical expense deduction comes from this age group. Therefore, until the new 10% threshold is assumed for all taxpayers in 2017, the revenue increase would be approximately $8.5 million for FY 13-14. This amount was then grown using Moody's Economy.com's Medical Care forecast.

FSA/HSA and Executive Compensation Changes

The fiscal impact was estimated to be insignificant based on prorating the US Joint Committee on Taxation estimates of the nationwide federal impact and applying an approximate state effective tax rate.

Executive Compensation

The fiscal impact was estimated to be insignificant based on prorating the US Joint Committee on Taxation estimates of the nationwide federal impact and applying an approximate state effective tax rate.

Enhanced Expensing

The methodology used begins with the US Joint Committee on Taxation estimates of the nationwide federal impact by federal fiscal year ((federal fiscal years run from October through September). The national numbers were prorated and an approximate state effective tax rate was applied to arrive at the estimated impact based on the federal fiscal year. Fiscal Research adjusted these numbers to an approximate fiscal impact based on the State's fiscal year.

SOURCES OF DATA: US Joint Committee on Taxation, Moody's Economy.com, IRS

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #2

CONSTRUCTION OF WILLS AND TRUSTS

LEGISLATIVE PROPOSAL #2

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2010 REGULAR SESSION OF THE 2009 GENERAL ASSEMBLY

AN ACT TO CONSTRUE CERTAIN FORMULA CLAUSES THAT REFER TO FEDERAL ESTATE AND GENERATION-SKIPPING TRANSFER TAX LAWS

SHORT TITLE: Construction of Wills and Trusts.

PRIMARY SPONSORS: Senator Clodfelter
Representative Carney

BRIEF OVERVIEW: This proposal would construe certain formula clauses that reference federal estate and generation-skipping transfer tax laws applicable to estates and trusts of decedents dying in calendar year 2010, during which time there is no applicable federal estate or generation-skipping transfer tax, to refer to the applicable laws as they applied with respect to estates and trusts of decedents dying on December 31, 2009.

FISCAL IMPACT:

EFFECTIVE DATE: The proposal would become effective when it becomes law and applies to the estates of decedents who die after December 31, 2009, and to trusts created by settlors who die after December 31, 2009.

A copy of the proposed legislation and a bill analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

U **D**

BILL DRAFT 2009-RBz-49 [v.4] (04/15)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/4/2010 8:53:30 AM

Short Title: Construction of Wills and Trusts. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CONSTRUE CERTAIN FORMULA CLAUSES THAT REFER TO FEDERAL ESTATE AND GENERATION-SKIPPING TRANSFER TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 31 of the General Statutes is amended by adding a new section to read:

"<u>**§ G.S. 31-46.1. Construction of certain formula clauses applicable to estates of decedents dying in calendar year 2010.**</u>

<u>(a) Purpose. – The federal estate tax and generation-skipping transfer tax expired January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills and trusts, and to promote judicial economy in the administration of trusts and estates, this section construes certain formula clauses that reference federal estate and generation-skipping transfer tax laws and that are used in wills of decedents who die in calendar year 2010.</u>

<u>(b) Applicability. – This section applies to a will of a decedent who dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax. This section does not apply to a will that is executed or amended after December 31, 2009, or to a will that clearly manifests an intent that a contrary rule applies when a decedent dies on a date on which there is no then-applicable federal estate or generation-skipping transfer tax.</u>

<u>(c) Construction. – A will that is subject to this section is considered to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009, if the will contains a formula that meets one or more of the following conditions:</u>

<u>(1) The formula refers to any of the following: 'applicable credit amount,' 'applicable exclusion amount,' 'applicable exemption amount,' 'applicable fraction,' 'estate tax exemption,' 'generation-skipping</u>

transfer tax exemption,' 'GST exemption,' 'inclusion ratio,' 'marital deduction,' 'maximum marital deduction,' 'unified credit,' or 'unlimited marital deduction.'

(2) The formula measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes.

(3) The formula is otherwise based on a provision of federal estate tax or federal generation-skipping transfer tax law similar to the provisions in subdivisions (1) or (2) of this subsection.

(d) Judicial Determination. – The personal representative or an affected beneficiary under a will or testamentary trust may bring an action in the superior court division of the General Court of Justice under Article 26 of Chapter 1 of the General Statutes and the trustee of a trust created under the will or an affected beneficiary under the trust may bring a proceeding as permitted under Article 2 of Chapter 36C of the General Statutes to determine whether the decedent intended that the references under subsection (c) of this section be construed with respect to the federal law as it existed after December 31, 2009. The action must be commenced within 12 months following the death of the decedent."

SECTION 2. Article 1 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ G.S. 36C-1-113. Construction of certain formula clauses applicable to estates of decedents dying in calendar year 2010.**

(a) Purpose. – The federal estate tax and generation-skipping transfer tax expired January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills and trusts, and to promote judicial economy in the administration of trusts and estates, this section construes certain formula clauses that reference federal estate and generation-skipping transfer tax laws and that are used in trusts created by settlors who die in calendar year 2010.

(b) Applicability. – This section applies to a trust created by a settlor who dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax. This section does not apply to a trust that is executed or amended after December 31, 2009, or to a trust that clearly manifests an intent that a contrary rule applies when a decedent dies on a date on which there is no then-applicable federal estate or generation-skipping transfer tax.

(c) Construction. – A trust subject to this section is considered to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009, if the trust contains a formula that meets one or more of the following conditions:

(1) The formula refers to any of the following: 'applicable credit amount,' 'applicable exclusion amount,' 'applicable exemption amount,' 'applicable fraction,' 'estate tax exemption,' 'generation-skipping transfer tax exemption,' 'GST exemption,' 'inclusion ratio,' 'marital

deduction,' 'maximum marital deduction,' 'unified credit,' or 'unlimited marital deduction.'

(2) The formula measures a share of a trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes.

(3) The formula is otherwise based on a provision of federal estate tax or federal generation-skipping transfer tax law similar to the provisions in subdivisions (1) or (2) of this subsection.

(d) Judicial Determination. – The trustee of the trust or an affected beneficiary under the trust may commence a proceeding to determine whether the settlor intended that the references under subsection (c) of this section be construed with respect to the federal law as it existed after December 31, 2009. The proceeding must be commenced within 12 months following the death of the settlor."

SECTION 3. G.S. 36C-2-203(f) is amended by adding a new subdivision to read:

"(f) Without otherwise limiting the jurisdiction of the superior court division of the General Court of Justice, proceedings concerning the internal affairs of trusts shall not include, and, therefore, the clerk of superior court shall not have jurisdiction under subsection (a) of this section of the following:

(1) Actions to reform, terminate, or modify a trust as provided by G.S. 36C-4-410 through G.S. 36C-4-416;

(2) Actions by or against creditors or debtors of a trust;

(3) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence;

(4) Actions to enforce a charitable trust under G.S. 36C-4-405.1;

(5) Actions to amend or reform a charitable trust under G.S. 36C-4A-1; and

(6) Actions involving the exercise of the trustee's special power to appoint to a second trust pursuant to G.S. 36C-8-816.1.

(7) Actions to construe a formula contained in a trust subject to G.S. 36C-1-113."

SECTION 4. This act is effective when it becomes law, and applies to the estates of decedents dying after December 31, 2009, and to trusts created by settlors who die after December 31, 2009.

Bill Draft 2009-RBz-49:
Construction of Wills and Trusts.

2009-2010 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	May 3, 2010
Introduced by:		**Prepared by:**	Cindy Avrette
Analysis of:	2009-RBz-49		Committee Counsel

SUMMARY: Bill Draft 2009-RBz-49 would construe certain formula clauses that reference federal estate and generation-skipping transfer tax laws applicable to estates and trusts of decedents dying in calendar year 2010, during which time there is no applicable federal estate or generation-skipping transfer tax, to refer to the applicable laws as they applied with respect to estates and trusts of decedents dying on December 31, 2009.

CURRENT LAW: Effective January 1, 2010, the federal estate tax and generation-skipping transfer tax law is repealed for one year. In 2001, Congress enacted the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). That law made significant changes to the federal estate and generation-skipping transfer tax laws, culminating in the repeal of the tax for one year in 2010. The Act provided that the changes made by EGTRRA would expire on December 31, 2010, and the tax law would be applied as if the provisions and amendments made by the legislation had never been enacted.

Most people did not anticipate that Congress would let the estate tax expire. In April 2009, Congress approved a Fiscal 2010 Budget Resolution which called for extending the federal estate tax into 2010. However, Congress did not enact the necessary legislation to extend the tax. The House of Representatives passed HR 4151 on December 12, 2009. That bill would have made permanent the $3,500,000 estate tax exemption amount and the 45% maximum tax rate. The Senate did not pass the legislation; hence the expiration of the estate tax for 2010.

BILL ANALYSIS: Many wills and trust agreements include formula provisions to determine what amounts of the estate will pass to different beneficiaries or to trusts for the benefit of different beneficiaries. These formula provisions are usually based upon the estate and generation-skipping transfer tax laws applicable at the time of the decedent's death. With the repeal of the federal estate law for the year 2010, these provisions could result in a devise contrary to the decedent's intent. For example, a will or trust agreement could include a formula provision allocating the largest amount or percentage of the testator's estate that can pass free of estate tax to a "Family Trust" for the benefit of the testator's children and the remainder of the estate to a "Marital Trust" for the benefit of the testator's surviving spouse. Under the current law, it is possible that this kind of provision would result in the entire estate passing to the Family Trust and nothing passing to the Marital Trust.

This proposal provides that a will or trust agreement of a decedent that dies in calendar year 2010 that refers to the federal estate and generation-skipping transfer tax laws is deemed to refer to the law as it existed on December 31, 2009, unless the document clearly manifests an intent that a contrary rule apply. At least six other states have adopted similar construction provisions[1] and at least four states are considering similar legislation.[2]

[1] Idaho, Indiana, South Dakota, Tennessee, Virginia, and Washington.
[2] Florida, Maryland, Nebraska, and New York.

EFFECTIVE DATE: The proposal is effective when it becomes law and applies to the estates of decedents who die after December 31, 2009, and to trusts created by settlors who die after December 31, 2009.

2009-RBz-49-SMRB-57 v1

LEGISLATIVE PROPOSAL #3

ECONOMIC INCENTIVES ALIGNMENT AND CHANGES

LEGISLATIVE PROPOSAL #3

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2010 REGULAR SESSION OF THE 2009 GENERAL ASSEMBLY

AN ACT TO INCREASE UNIFORMITY IN SUNSET AND REPORTING REQUIREMENTS OF ECONOMIC INCENTIVES TOOLS AND TO ELIMINATE NON-UTILIZED ECONOMIC INCENTIVES

SHORT TITLE: Economic Incentives Alignment and Changes.

PRIMARY SPONSORS: Senator Jenkins
Representative McComas

BRIEF OVERVIEW: The proposal does three things:

- It would harmonize sunset and reporting features and requirements across the State's various economic incentives.
- It would create a single, unified economic incentives report that contains the information currently reported in separate reports for each economic incentive.
- It would delete obsolete credits under Articles 3C and 3G.

FISCAL IMPACT:

EFFECTIVE DATE: This act would become effective July 1, 2010, and includes effective language that would ensure that sales and use tax refund eligibility would not be affected.

A copy of the proposed legislation and a bill analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

U **D**

BILL DRAFT 2009-RBxz-54 [v.3] (05/05)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/5/2010 8:22:26 AM

Short Title: Economic Incentives Alignment & Changes. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO INCREASE UNIFORMITY IN SUNSET AND REPORTING REQUIREMENTS OF ECONOMIC INCENTIVES TOOLS AND TO ELIMINATE NON-UTILIZED ECONOMIC INCENTIVES.

The General Assembly of North Carolina enacts:

PART I: ECONOMIC INCENTIVES REPORTING AND SUNSETS

SECTION 1.1. G.S. 105-129.6(b) reads as rewritten:

"(b) ~~Reports. –~~ Report. – The Department ~~of Revenue shall publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by credit and by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number of credits taken for each credit allowed in this Article.

(2) The number and enterprise tier area of new jobs with respect to which credits were generated and to which credits were taken.

(3) The cost and enterprise tier area of machinery and equipment with respect to which credits were generated and to which credits were taken.

(4) The number of new jobs created by businesses located in development zones, and the percentage of jobs at those locations that were filled by residents of the zones.

(5) The amount and enterprise tier area of worker training expenditures with respect to which credits were generated and to which credits were taken.

(6) The amount and enterprise tier area of new research and development expenditures with respect to which credits were generated and to which credits were taken.

(7) The cost and enterprise tier area of real property investment with respect to which credits were generated and to which credits were taken."

SECTION 1.2. G.S. 105-129.19 reads as rewritten:

"**§ 105-129.19. ~~Reports.~~Report.**

The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information ~~for the 12-month period ending the preceding December 31:~~ itemized by credit and by taxpayer:

(1) The number of taxpayers that took the credits allowed in this Article.

(2) The cost of ~~business property and~~ renewable energy property with respect to which credits were taken.

(2a) Repealed by Session Laws 2002-87, s. 6, effective August 22, 2002.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.3. G.S. 105-129.26(e) reads as rewritten:

"(e) ~~Reports. —~~ Report. – The ~~Department of Commerce and the~~ Department ~~of Revenue shall jointly publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number and location of large and major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of credits taken under this Article."

SECTION 1.4. Article 3C of Chapter 105 of the General Statutes is amended by adding the following section to read:

"**§ 105-129.29. Sunset.**

This Article is repealed for taxable years beginning on or after January 1, 2018."

SECTION 1.5. G.S. 105-129.38 reads as rewritten:

"**§ 105-129.38. ~~Reports.~~Report.**

The Department ~~of Revenue must publish by May 1 of each year~~ must include in the economic incentives report required by G.S. 105-256 the following information ~~for the 12-month period ending the preceding December 31:~~ itemized by taxpayer:

(1) The number of taxpayers that took the credits allowed in this Article.

(2) The amount of rehabilitation expenses and qualified rehabilitation expenditures with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.6. Article 3D of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.39. Sunset.**

This Article expires for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2014."

SECTION 1.7. G.S. 105-129.44 reads as rewritten:

"**§ 105-129.44. Report.**

The Department ~~of Revenue must publish by May 1 of each year~~ must include in the economic incentives report required by G.S. 105-256 the following information ~~for the 12-month period ending the preceding December 31:~~itemized by taxpayer:

(1) The number of taxpayers that took the credit allowed in this Article.

(2) The location of each qualified North Carolina low-income building or housing development for which a credit was taken.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.8. G.S. 105-129.54 reads as rewritten:

"**§ 105-129.54. ~~Reports.~~Report.**

The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number of taxpayers that took a credit allowed in this Article, itemized by the categories of small business, low-tier, other, and university research.

(2) The amount of each credit taken in each category.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.9. Article 3H of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.75A. Report.**

The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

(1) The number of taxpayers that took the credits allowed in this Article.

(2) The amount of rehabilitation expenses and qualified rehabilitation expenditures with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.10. G.S. 105-129.85(b) reads as rewritten:

"(b) ~~Reports. –~~ Report. – The Department ~~of Revenue shall publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by credit and by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number and amount of credits generated and taken for each credit allowed in this Article.

(2) The number and development tier area of new jobs with respect to which credits were generated and to which credits were taken.

(3) The cost and development tier area of business property with respect to which credits were generated and to which credits were taken.

(4) The cost and development tier area of real property investment with respect to which credits were generated and to which credits were taken."

SECTION 1.11. G.S. 105-129.98 reads as rewritten:

"**§ 105-129.98. ~~Reports.~~Report.**

The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following ~~information,~~information itemized by ~~taxpayer, for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number of taxpayers that claimed a credit allowed in this Article.

(2) The amount of each credit claimed and the taxes against which it was applied.

(3) The total cost to the General Fund of the credits claimed."

SECTION 1.12. G.S. 105-130.41(c1) reads as rewritten:

"(c1) Report. – The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number of taxpayers taking a credit allowed in this section.

(2) The total amount of charges assessed for the taxable year.

(2a) The amount of the charges attributable to imports.

(2b) The amount of the charges attributable to exports.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.13. G.S. 105-130.45(f) reads as rewritten:

"(f) Report. – The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number of taxpayers taking a credit allowed in this section.

(2) The total amount of exports with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.14. G.S. 105-130.46(k) reads as rewritten:

"(k) ~~Reports. – Any corporation that takes a credit under this section must submit an annual report by May 1 of each year to the Senate Finance Committee, the House of Representatives Finance Committee, the Senate Appropriations Committee, the House of Representatives Appropriations Committee, and the Fiscal Research Division of the General Assembly. The report must state the amount of credit earned by the corporation during the previous year, the amount of credit including carryforwards claimed by the corporation during the previous year, and the percentage of domestic leaf content in cigarettes produced by the corporation during the previous year. The first reports required under this section are due by May 1, 2006.~~Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

(1) The number of taxpayers that took the credit allowed in this section.

(2) The amount of cigarettes and other tobacco products exported through the North Carolina State Ports with respect to which credits were taken.

(3) The percentage of domestic leaf content in cigarettes produced during the previous year, as reported by the taxpayer.

(4) The total cost to the General Fund of the credits taken."

SECTION 1.15. G.S. 105-130.47(h) reads as rewritten:

"(h) Report. – The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information, itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The location of sites used in a production for which a credit was taken.

(2) The qualifying expenses for which a credit was taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits taken.

(4) The total cost to the General Fund of the credits taken."

SECTION 1.16. G.S. 105-151.22(c1) reads as rewritten:

"(c1) Report. – The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number of taxpayers taking a credit allowed in this section.

(2) The total amount of charges assessed for the taxable year.

(2a) The amount of the charges attributable to imports.

(2b) The amount of the charges attributable to exports.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.17. G.S. 105-151.29(h) reads as rewritten:

"(h) Report. – The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following ~~information,~~information itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The location of sites used in a production for which a credit was taken.

(2) The qualifying expenses for which a credit was taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits taken.

(4) The total cost to the General Fund of the credits taken."

SECTION 1.18. G.S. 105-164.14(a1), (f), (g), (h), (j), (k), (*l*), (m), (n), and (o) are repealed.

SECTION 1.19. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.14A. Economic incentive refunds.**

(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:

(1) Passenger air carrier. – An interstate passenger air carrier is allowed a refund of the sales and use tax paid by it on fuel in excess of two

million five hundred thousand dollars ($2,500,000). The amount of sales and use tax paid does not include a refund allowed to the interstate passenger air carrier under 105-164.14(a). This subdivision is repealed for purchases made on or after January 1, 2011.

(2) Major recycling facility. – An owner of a major recycling facility is allowed a refund of the sales and use tax paid by it on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. This subdivision is repealed for purchases made on or after January 1, 2018."

(3) Business in low-tier area. – A taxpayer that is engaged primarily in one of the businesses listed in G.S. 105-129.83(a) in a development tier one area and that places machinery and equipment in service in that area is allowed a refund of the sales and use tax paid by it on the machinery and equipment. For the purpose of this subdivision, "machinery and equipment" includes engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. 105-129.83, capitalized for tax purposes under the Code, and not leased to another party. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. The sunset for Article 3J of Chapter 105 of the General Statutes for development tier one areas applies to this subdivision.

(4) Motorsports team or sanctioning body. – A professional motorsports racing team or a motorsports sanctioning body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For the purpose of this subdivision, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motor sports testing. This subdivision is repealed for purchases made on or after January 1, 2011.

(5) Professional motorsports team. – A professional motorsports racing team is allowed a refund of fifty percent (50%) of the sales and use tax paid by it in this State on tangible personal property, other than tires or accessories, that comprises any part of a professional motor racing vehicle. For the purpose of this subdivision, "motorsports accessories" includes instrumentation, telemetry, consumables, and paint. This subdivision is repealed for purchases made on or after January 1, 2014.

(6) Analytical services business. – A taxpayer engaged in analytical services in this State is allowed a refund of sales and use tax paid by it.

This subdivision is repealed for purchases made on or after January 1, 2013. The amount of the refund is the greater of the following:

a. Fifty percent (50%) of the eligible amount of sales and use tax paid by it on tangible personal property that is consumed or transformed in analytical service activities. The eligible amount of sales and use tax paid by the taxpayer in this State is the amount by which sales and use tax paid by the taxpayer in this State in the fiscal year exceed the amount paid by the taxpayer in this State in the 2006-2007 State fiscal year.

b. Fifty percent (50%) of the amount of sales and use tax paid by it in the fiscal year on medical reagents.

(7) Railroad Intermodal Facility. – The owner or lessee of an eligible railroad intermodal facility is allowed a refund of sales and use tax paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the facility. Liability incurred indirectly by the owner or lessee of the facility for sales and use taxes on these items is considered tax paid by the owner or lessee. This subdivision is repealed for purchases made on or after January 1, 2038.

(b) Administration. – A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(c) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by refund and by taxpayer:

(1) The number of taxpayers claiming a refund allowed in this section.

(2) The total amount of purchases with respect to which refunds were claimed.

(3) The total cost to the General Fund of the refunds claimed."

SECTION 1.20. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.14B. Certain industrial facilities refunds.**

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

(1) Air courier services. – The furnishing of air delivery of individually addressed letters and packages for compensation, except by the United States Postal Service.

(2) Aircraft manufacturing. – The manufacturing or assembling of complete aircraft or of aircraft engines, blisks, fuselage sections, flight decks, flight deck systems or components, wings, fuselage fairings, fins, moving leading and trailing wing edges, wing boxes, nose sections, tailplanes, passenger doors, nacelles, thrust reversers, landing gear, braking systems, or any combination of these.

(3) Bioprocessing. – Biomanufacturing or processing that includes the culture of cells to make commercial products, the purification of biomolecules from cells, or the use of these molecules in manufacturing.

(4) Reserved.

(5) Reserved.

(6) Facility. – A single building or structure or a group of buildings or structures that are located on a single parcel of land or on contiguous parcels of land under common ownership and any other related real property contained on the parcel or parcels.

(7) Financial services, securities operations, and related systems development. – One or both of the following functions:

a. Performing analysis, operations, trading, or sales functions for investment banking, securities dealing and brokering, securities trading and underwriting, investment portfolio or mutual fund management, retirement services, or employee benefit administration.

b. Developing information technology systems and applications, managing and enhancing operating applications and databases, or providing, operating, and maintaining telecommunications networks and distributed and mainframe computing resources for investment banking, securities dealing and brokering, securities trading and underwriting, investment portfolio or mutual fund management, retirement services, or employee benefit administration.

(8) Reserved.

(9) Reserved.

(10) Reserved.

(11) Motor vehicle manufacturing. – Any of the following:

a. Manufacturing complete automobiles and light-duty motor vehicles.

b. Manufacturing heavy-duty truck chassis and assembling complete heavy-duty trucks, buses, heavy-duty motor homes, and other special purpose heavy-duty motor vehicles for highway use.

c. Manufacturing complete military armored vehicles, nonarmored military universal carriers, combat tanks, and specialized components for combat tanks.

(12) Reserved.

(13) Reserved.

(14) Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines. – Any of the following:

a. Manufacturing biological and medicinal products. For the purpose of this sub-subdivision, a biological product is a preparation that is synthesized from living organisms or their products and used medically as a diagnostic, preventive, or therapeutic agent. For the purpose of this sub-subdivision, bacteria, viruses, and their parts are considered living organisms.

b. Processing botanical drugs and herbs by grading, grinding, and milling.

c. Isolating active medicinal principals from botanical drugs and herbs.

d. Manufacturing pharmaceutical products intended for internal and external consumption in forms such as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.

(15) Reserved.

(16) Reserved.

(17) Related entity. – An entity for which the taxpayer possesses directly or indirectly at least eighty percent (80%) of the control and value.

(18) Semiconductor manufacturing. – The development and production of semiconductor material, devices, or components.

(19) Solar electricity generating materials manufacturing. – The development and production of one or more of the following:

a. Photovoltaic materials or modules used in producing electricity.

b. Polymers or polymer films primarily intended for incorporation into photovoltaic materials or modules used in producing electricity.

(20) Strategic partner. – A business that is engaged in activities at the facility that directly contribute to the manufacture and distribution of computers and computer peripherals and with whom the taxpayer has contracted to provide those activities at the facility in direct support of its manufacturing and distribution activities.

(b) Refund. – An owner of an industrial facility that meets the business, minimum investment, and industry-specific requirements of this section is allowed an annual refund of sales and use tax paid by it under this Article on building materials, building supplies, fixtures, and equipment that are installed in the construction of the facility and that become a part of the real property of the facility. Liability incurred indirectly by the owner for sales and use taxes on those items is considered tax paid by the owner. The requirements are:

(1) Business requirement. – The facility is primarily engaged in one or more of the following:

a. Air courier services.

b. Aircraft manufacturing.

c. Bioprocessing.

d. Financial services, securities operations, and related systems development.

e. Motor vehicle manufacturing.

f. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines.

g. Semiconductor manufacturing.

h. Solar electricity generating materials manufacturing.

(2) Minimum investment requirement. – The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for the facility. If the facility is located in a development tier one area, the required amount is fifty million dollars ($50,000,000). For all other facilities, the required amount is one hundred million dollars ($100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner.

(3) Industry-specific requirements:

a. If the facility is primarily engaged in financial services, securities operations, and related systems development, it satisfies all of the following conditions:

1. It is owned and operated by the business for which the services are provided or by a related entity of that business as defined in G.S. 105-130.7A.

2. No part of it is leased to a third-party tenant that is not a related entity of the business.

b. If the facility is primarily engaged in solar electricity generating materials manufacturing, the business satisfies a wage standard at the facility. The wage standard is equal to one hundred five percent (105%) of the lesser of the average weekly wage for all insured private employers in the State and the average weekly wage for all insured private employers in the county. A business satisfies the wage standard if it pays an average weekly wage that is at least equal to the amount required by this sub-subdivision. In making the wage calculation, the business must include any jobs that were filled for at least 1,600 hours during the calendar year.

(c) Forfeiture. – If the owner of an eligible facility does not make the required minimum investment within five years after the first refund under this section with respect to the facility, the facility loses its eligibility and the owner forfeits all refunds already received under this subsection. Upon forfeiture, the owner is liable for tax under this Article equal to the amount of all past taxes refunded under this section, plus interest at the rate established in G.S. 105-241.21, computed from the date each refund was issued. The tax and interest are due 30 days after the date of the forfeiture. A person that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(d) Administration. – A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(e) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by refund and taxpayer:

(1) The number of taxpayers claiming a refund allowed in this section.

(2) The total amount of purchases with respect to which refunds were claimed.

(3) The location of facilities with respect to which refunds were claimed.

(4) The total cost to the General Fund of the refunds claimed.

(f) Sunset. – This section is repealed for sales made on or after January 1, 2013."

SECTION 1.21. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.29B. Information to counties and cities.**

The Secretary must give information on refunds of tax made under this Article to a designated county or city official within 30 days after the official makes a written request to the Secretary for the information. For a request made by a county official, the Secretary must give the official a list of each claimant that received a refund in the past 12 months of at least one thousand dollars ($1,000) of tax paid to the county. For a request made by a city official, the Secretary must give the official a list of each claimant that received a refund in the past 12 months of at least one thousand dollars ($1,000) of tax paid to all the counties in which the city is located. The list must include the name and address of each of these claimants and the amount of the refund received from each county covered by the request.

A claimant that has received a refund under this Article of tax paid to a county must give information on the refund to a designated official of the county or a city located in the county. The claimant must give the information to the county or city official within 30 days after the official makes a written request to the claimant for the information. For a request by a county or city official, the claimant must give the official a copy of the request for the refund and any supporting documentation requested by the official to verify the request. If a claimant determines that a refund it has received under this Article is incorrect, the claimant must file an amended request for a refund.

For the purpose of this section, a designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the Board, and a designated city official is the mayor of the city or a city official designated in a resolution adopted by the city's governing board. Information given to a county or city official under this section is not a public record and may not be disclosed except as provided in G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 1.22. G.S. 105-256(a) is amended by inserting a new subdivision between subdivisions (2) and (3) to read:

"(a) Publications. – The Secretary shall prepare and publish the following:

…

(2a) By May 1 of each year, an economic incentives report that contains information on tax credits and tax refunds, itemized by credit or refund and by taxpayer, for the previous calendar year.

…"

PART II: OBSOLETE ECONOMIC INCENTIVES

SECTION 2.1. Article 3C of Chapter 105 of the General Statutes reads as rewritten:

"Article 3C.

"Tax Incentives For Recycling Facilities.

"**§ 105-129.25. Definitions.**

The following definitions apply in this Article:

…

~~(3) Large recycling facility. – A recycling facility that qualifies under G.S. 105-129.26(b).~~

…

"**§ 105-129.26. Qualification; forfeiture.**

(a) Major Recycling Facility. – A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars ($300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

~~(b) Large Recycling Facility. – A recycling facility qualifies for the tax credit provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following conditions:~~

~~(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.~~

~~(2) The Secretary of Commerce has certified that the owner will, by the end of the second year after the year the owner begins construction of the recycling facility, invest at least one hundred fifty million dollars ($150,000,000) in the facility and create at least 155 new, full-time jobs at the facility.~~

~~(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.~~

…

(e) Reports. – The Department of Commerce and the Department of Revenue shall jointly publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number and location of ~~large and~~ major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of credits taken under this Article.

"**§ 105-129.27. Credit for investing in ~~large or~~ major recycling facility.**

(a) Credit. – An owner that purchases or leases machinery and equipment for a major recycling facility in this State during the taxable year is allowed a credit equal to fifty percent (50%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment. ~~An owner that purchases or leases machinery and equipment for a large recycling facility in this State during the taxable year is allowed a credit equal to twenty percent (20%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.~~

…"

SECTION 2.2. Article 3G of Chapter 105 of the General Statutes is repealed.

PART III: CONFORMING CHANGES

SECTION 3.1. G.S. 75-29(a) reads as rewritten:

"(a) No person, firm or corporation shall advertise the sale of its merchandise using the term "wholesale" with regard to its sale prices, except as such word may appear in the company or firm name, unless such advertised sale or sales is, or are, to a customer or customers having a certificate of resale issued pursuant to G.S. 105-164.28 and recorded as required by G.S. 105-164.25 or unless the wholesale price is established by an independent agency not engaged in the manufacture, distribution or sale of such merchandise.

No person, firm or corporation shall utilize in any commercial transaction a company or firm name which contains the word "wholesale" unless such person, firm or corporation is engaged principally in sales at wholesale as defined in G.S. 105-164.3. For the purposes of determining whether sales are made principally at wholesale or retail, all sales to employees of any such person, firm or corporation, all sales to organizations subject to refunds pursuant to ~~G.S. 105-164.14,~~<u>G.S. 105-164.14 through G.S. 105-164.14B</u> and all exempt sales pursuant to G.S. 105-164.13 shall be considered sales at wholesale. Sales of merchandise for delivery by the seller to the purchaser at a location other than the seller's place of business shall be considered sales at wholesale for the purposes of this section."

SECTION 3.2. G.S. 105-129.2 reads as rewritten:

"**§ 105-129.2. Definitions.**

The following definitions apply in this Article:

…

(8a) Eligible major industry. – A taxpayer is an eligible major industry for the purposes of this Article if the taxpayer is primarily engaged in one of the industries listed in ~~G.S. 105-164.14(j)(3)~~G.S. 105-164.14B and the Secretary of Commerce has certified that the owner of the facility will invest at least one hundred million dollars ($100,000,000) of private funds to acquire, construct, and equip a facility in this State to engage in one or more of those industries.

…"

SECTION 3.3. G.S. 105-164.3 is amended by adding a new subsection to read:

"(6a) Development tier. – The classification assigned to an area pursuant to G.S. 143B-437.08."

SECTION 3.4. G.S. 105-187.18(b) reads as rewritten:

"(b) Except for the exemption for sales a state cannot constitutionally tax, the exemptions ~~in G.S. 105-164.13~~ and ~~the~~ refunds allowed in ~~G.S. 105-164.14~~Article 5 of this Chapter do not apply to the taxes imposed by this Article."

SECTION 3.5. G.S. 105-187.23 reads as rewritten:

"**§ 105-187.23. Exemptions and refunds.**

(a) Exemptions. – Except for the exemption for sales a state cannot constitutionally tax, the exemptions allowed in ~~G.S. 105-164.13~~ Article 5 of this Chapter do not apply to the taxes imposed by this Article.

(b) Refunds. – The refunds allowed in ~~G.S. 105-164.14~~Article 5 of this Chapter do not apply to the taxes imposed by this Article. A person who buys at least 50 new white goods of any kind in the same sale or purchase may obtain a refund equal to sixty percent (60%) of the amount of tax imposed by this Article on the white goods when all of the white goods purchased are to be placed in new or remodeled dwelling units that are located in this State and do not contain the kind of white goods purchased. To obtain a refund, a person must file an application for a refund with the Secretary. The application must contain the information required by the Secretary, be signed by the purchaser of the white goods, and be submitted by the date set by the Secretary."

SECTION 3.6. G.S. 105-187.33 reads as rewritten:

"**§ 105-187.33. Exemptions and refunds.**

Except for the exemption for sales a state cannot constitutionally tax, the exemptions and refunds allowed in ~~G.S. 105-164.13~~Article 5 of this Chapter do not apply to the taxes imposed by this Article. ~~The refunds allowed in G.S. 105-164.14 do not apply to the taxes imposed by this Article.~~"

SECTION 3.7. G.S. 105-259(b) reads as rewritten:

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

…

(6a) To furnish the county or city official designated under ~~G.S. 105-164.14(f)~~G.S. 105-164.29B a list of claimants that have received a refund of the county sales or use tax to the extent authorized in ~~G.S. 105-164.14(f).~~that statute.

…

~~(31) To verify with a related entity or strategic partner information relating to that entity provided by a taxpayer claiming a credit under Article 3G of this Chapter.~~

…

~~(35) To furnish to a taxpayer claiming a credit under Article 3G of this Chapter information from a related entity or strategic partner to the extent that information was used by the Secretary to adjust the amount of tax credit claimed by the taxpayer.~~

…

(37) To furnish the Department of Commerce with the information needed to complete the ~~studies~~ study required under ~~G.S. 105-129.2A and~~ G.S. 105-129.82.

…"

SECTION 3.8. G.S. 105-467(b) reads as rewritten:

"(b) Exemptions and Refunds. – The State exemptions and exclusions contained in G.S. 105-164.13, the State sales and use tax holidays contained in G.S. 105-164.13C and G.S. 105-164.13D, and the State refund provisions contained in G.S. 105-164.14 through G.S. 105-164.14B apply to the local sales and use tax authorized to be levied and imposed under this Article. Except as provided in this subsection, a taxing county may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax. A local school administrative unit and a joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and equipment on their behalf is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity, telecommunications service, and ancillary service. Sales and use tax liability indirectly incurred by the entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the entity and is being erected, altered, or repaired for use by the entity is considered a sales or use tax liability incurred on direct purchases by the entity for the purpose of this subsection. A request for a refund shall be in writing and shall include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the entity's fiscal year. Refunds applied for more than three years after the due date are barred."

PART IV: EFFECTIVE DATE

SECTION 4. This act becomes effective July 1, 2010. The first economic incentives report required by G.S. 105-256, as amended by this act, is due by May 1, 2011. The first claim for refund by a taxpayer whose sales tax refund period is changed by this act is due within six months after July 1, 2010, and applies to purchases during the time period not covered by the taxpayer's last claim for refund.

2009-MCxz-234: Economic Incentives Alignment and Changes

2009-2010 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	April 21, 2010
Introduced by:		**Prepared by:**	Dan Ettefagh Committee counsel
Analysis of:	2009-MCxz-234		

SUMMARY:* *This bill would (1) harmonize sunset and reporting features and requirements across the State's various economic incentives, (2) create a single, unified economic incentives report that contains the information currently reported in separate reports for each economic incentive, and (3) delete obsolete credits under Articles 3C and 3G.

CURRENT LAW: Under current law, many of the economic incentives enacted as the Article 3 credits, the income tax credits, and the sales and use tax benefits have some combination of reporting requirements and sunset provisions; however, those requirements are not uniformly set out in each incentive. Where reporting requirements are set out, there are inconsistencies with respect to itemization by taxpayer, the reporting entity, and other miscellaneous differences.

Under current law, there are two economic incentives that are not utilized. The first is the credit in Article 3C for large recycling facilities. This credit was intended for Wisconsin Tissue; however that company never located in North Carolina. The second credit is the credit for major computer manufacturing facilities in Article 3G. With Dell closing the facility for which the credit was enacted, no other taxpayer utilizes that credit.

BILL ANALYSIS: Part I of the bill requires each separate report for the State's economic incentives to be reported in an economic incentives report and establishes sunsets for various economic incentives, as provided in the chart below. Part II of the bill eliminates obsolete economic incentives. Part III of the bill makes conforming changes to various statutory provisions.

Section Number(s)	Effect
1.2	Adds requirement of itemization by taxpayer and by credit to the Art. 3B (business and energy tax credits) report
1.5 & 1.7	Adds requirement of itemization by taxpayer to Arts. 3D (historic structure rehab) and 3E (low-income housing) report, respectively
1.9	Creates reporting requirement for Art. 3H (mill property rehab)
1.14	Transfers reporting requirement for G.S. 105-130.46 (credit for exporting cigarettes and increasing employment) from the corporation claiming the credit to DOR and harmonizes reporting requirements
1.18, 1.19, & 1.20	Separates and categorizes the current sales and use tax refunds, all of which are currently found in G.S. 105-164.14, into three types of refunds: (1) refunds that were enacted for non-industrial facilities for economic incentives purposes (found in the newly created G.S. 105-164.14A), (2) refunds that were enacted for industrial facilities for economic incentives purposes (found in the newly created G.S. 105-

	164.14B), and (3) refunds that were not enacted for economic incentives purposes (remaining in G.S. 105-164.14)
1.22	Creates the economic incentives report
1.1, 1.2, 1.3, 1.5, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17, 1.18, & 1.21	Makes conforming and technical changes to the reporting requirement necessary to transfer the current, separate reports into a new, unified annual report.
1.4, 1.6, 1.19, & 1.20	Proposes sunsets for Art. 3C recycling facilities (2018), Art. 3D historic structure rehab (2014), and for the sales and use tax refund for major recycling facilities (2018), low-tier machinery (aligns sunset to Art. 3J), motorsports racing vehicle parts (2014), analytical services supplies (2013), and railroad intermodal facilities (2038).
2.1	Eliminates credit for large recycling facilities
2.2	Repeals Art. 3G (computer manufacturing)
Part III	Conforming changes

EFFECTIVE DATE: This act would become effective July 1, 2010, and includes effective language that would ensure that sales and use tax refund eligibility would not be affected.

LEGISLATIVE PROPOSAL #4

MODERNIZE ADMISSIONS TAX & RESTORE AMENITIES EXCLUSION

LEGISLATIVE PROPOSAL #4

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2010 REGULAR SESSION OF THE 2009 GENERAL ASSEMBLY

AN ACT TO MODERNIZE AND EQUALIZE THE ADMISSIONS TAX BY EXTENDING IT TO INTERNET TICKET RESELLERS, TO APPLY THE TAX ONLY TO THE CHARGE FOR ADMISSION TO AN EVENT AND NOT TO EXTRA AMENITIES, AND TO REQUIRE THE SECRETARY OF REVENUE TO PROVIDE ADVANCE NOTICE OF CERTAIN REVISED INTERPRETATIONS OF THE DEPARTMENT.

SHORT TITLE: Modernize Admissions Tax & Restore Amenities Exclusion

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PRIMARY SPONSORS: Senator Hartsell
Representative Gibson

BRIEF OVERVIEW: This proposal does three things:

- It extends the admissions tax to the Internet resale of tickets by a person engaged in the business of reselling. The tax would apply to the difference between the face value of the ticket and the price for which the reseller sells the ticket. This provision would become effective January 1, 2011, and apply to admission tickets sold on or after that date.
- It restores the Department of Revenue's pre-2009 interpretation of the admissions tax statute to exclude from tax charges for amenities that are bundled with a ticket purchase. This provision would become effective for charges for admission received on or after August 1, 2010.
- It requires the Department of Revenue to provide ample notice to taxpayers when it issues an interpretation that revises a prior interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due.

FISCA L IMPACT:

EFFECTIVE DATE: G.S. 105-37.1(a)(2), as amended by Section 1 of this proposal, becomes effective January 1, 2011, and applies to admission tickets sold on or after that date. The remainder of Section 1 of this proposal and Section 2 of this proposal become effective August 1, 2010. G.S. 105-37.1(a)(1), as amended by Section 1 of this proposal, applies to charges for admission received on or after August 1, 2010. The remainder of this proposal is effective when it becomes law.

A copy of the proposed legislation and bill analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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BILL DRAFT 2009-SVxz-17A [v.7] (03/22)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/3/2010 2:56:28 PM

Short Title:	Modernize Adm. Tax/Restore Amen. Exclusion.	(Public)
Sponsors:	Unknown.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE AND EQUALIZE THE ADMISSIONS TAX BY EXTENDING IT TO INTERNET TICKET RESELLERS, TO APPLY THE TAX ONLY TO THE CHARGE FOR ADMISSION TO AN EVENT AND NOT TO EXTRA AMENITIES, AND TO REQUIRE THE SECRETARY OF REVENUE TO PROVIDE ADVANCE NOTICE OF CERTAIN REVISED INTERPRETATIONS OF THE DEPARTMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-37.1 reads as rewritten:

"**§ 105-37.1. ~~Dances, athletic events, shows, exhibitions, and other entertainments.~~Live entertainment and ticket resales.**

(a) Scope. – A privilege tax is imposed on the ~~gross receipts of a person who is engaged in any of the~~ following:

(1) ~~Giving, offering, or managing a dance or an athletic contest for which an admission fee in excess of fifty cents (50¢) is charged.~~The gross admissions receipts of a person who is engaged in providing admission to live entertainment of any kind. Gross admissions receipts under this subdivision do not include charges for amenities. If charges for amenities are not separately stated on the face of an admission ticket, then the charge for admission is considered to be equal to the admission charge for a ticket to the same event that does not include amenities and is for a seat located directly in front of or closest to a seat that includes amenities.

(2) ~~Giving, offering, or managing a form of amusement or entertainment that is not taxed by another provision of this Article and for which an admission fee is charged.~~The gross admissions receipts of a person who is engaged in the business of reselling on the Internet under G.S. 14-344.1 an admission ticket that is taxable under subdivision (1)

of this subsection. If the price of an admission ticket is printed on the face of the ticket, gross receipts under this subdivision exclude the face price. If the price of an admission ticket is not printed on the face of the ticket, the tax under this subdivision applies to the difference between the amount the reseller paid for the ticket and the amount the reseller charges for the ticket.

(3) ~~Exhibiting a performance, show, or exhibition, such as a circus or dog show, that is not taxed by another provision of this Article.~~

(b) Rate and Payment. – The rate of the privilege tax imposed by this section is three percent ~~(3%) of the gross receipts from the activities described in subsection (a) of this section.~~(3%). The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month.

(c) Advance Report. – A person who owns or controls a ~~performance, show, or exhibition~~ live entertainment performance subject to the tax imposed by this section and who plans to bring the performance to this State from outside the State must file a statement with the Secretary that lists the dates, times, and places of the ~~performance, show, or exhibition.~~ performance. The statement must be filed no less than five days before the first ~~performance, show, or exhibition~~ performance in this State.

(d) Local Taxes. – Cities may levy a license tax on a person taxed under subdivision (a)(1) ~~or (a)(2)~~ of this section; however, the tax may not exceed twenty-five dollars ~~($25.00). Cities may levy a license tax on a person taxed under subdivision (a)(3) of this section; however, the tax may not exceed twenty-five dollars~~ ($25.00) for each day or part of a day the ~~performance, show, or exhibition~~ live entertainment is ~~given~~ performed at each location. Cities may not levy a license tax on a person taxed under subdivision (a)(2) of this section.

Counties may not levy a license tax on a person taxed under ~~subdivision (a)(1) or (a)(2) of~~ this section. ~~Counties may levy a license tax on a person taxed under subdivision (a)(3) to the same extent as a city.~~"

SECTION 2. G.S. 14-344.1(e) is repealed.

SECTION 3. If any provision of this act is declared by a court to violate the Internet Tax Freedom Act, Pub. L. 105-277, §§ 1100-1104, as amended, or is otherwise found to be invalid, then G.S. 14-344.1 is repealed.

SECTION 4. G.S. 105-264(c) reads as rewritten:

"(c) Revised Interpretations. – This section does not prevent the Secretary from changing an ~~interpretation~~ interpretation, and it does not prevent a change in an interpretation from applying on and after the effective date of the change. An interpretation that revises a prior interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due may not become effective sooner than the following:

(1) For a tax that is payable on a monthly or quarterly basis, the first day of a month that is at least 90 days after the date the revised interpretation is issued.

(2) For a tax that is payable on an annual basis, the first day of a tax year that begins after the date the revised interpretation is issued."

SECTION 5. G.S. 105-37.1(a)(2), as amended by Section 1 of this act, becomes effective January 1, 2011, and applies to admission tickets sold on or after that date. The remainder of Section 1 of this act and Section 2 of this act become effective August 1, 2010. G.S. 105-37.1(a)(1), as amended by Section 1 of this act, applies to charges for admission received on or after August 1, 2010. The remainder of this act is effective when it becomes law.

Bill Draft 2009-SVxz-17A:
Modernize Adm. Tax/Restore Amen. Exclusion.

2009-2010 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	May 5, 2010
Introduced by:		**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	2009-SVxz-17A		

SUMMARY: This proposal does three things:

- ***It extends the admissions tax to the Internet resale of tickets by a person engaged in the business of reselling. The tax would apply to the difference between the face value of the ticket and the price for which the reseller sells the ticket. This provision would become effective January 1, 2011, and apply to admission tickets sold on or after that date.***
- ***It restores the Department of Revenue's pre-2009 interpretation of the admissions tax statute to exclude from tax charges for amenities that are bundled with a ticket purchase. This provision would become effective for charges for admission received on or after August 1, 2010.***
- ***It requires the Department of Revenue to provide ample notice to taxpayers when it issues an interpretation that revises a prior interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due. This provision would be effective when it becomes law.***

CURRENT LAW & BILL ANALYSIS:

ADMISSIONS TAX

North Carolina imposes a 3% privilege tax on the gross receipts of a person who offers or manages any of the following taxable amusements:

- A dance or athletic contest for which admission fee in excess of 50¢ is charged.
- Amusement or entertainment for which an admission is charged.
- A performance, show, or exhibition, such as a circus or dog show.

EXTEND ADMISSIONS TAX TO INTERNET TICKET RESALES

CURRENT LAW:

Ticket scalping – G.S. 14-344 limits the total amount a seller or reseller of an admission ticket may charge to "…the combined face value of the ticket, tax and the authorized service fee." The service fee may not exceed $3.00 unless the promoter of the event and the ticket sales agency agree in writing to a different amount and that amount is made known to the public in writing. A violation of this section is punishable as a Class 2 misdemeanor.

Internet ticket resales – In 2008, as part of Senate Bill 1407, the General Assembly enacted G.S. 14-344.1. This statute authorizes a person to resell an admission ticket on the Internet with no cap on price unless the resale is prohibited by the venue. A person who resells an admission ticket under this statute is required to provide a ticket guarantee that must be conspicuously displayed on the person's Website and to direct a prospective purchaser to the ticket guarantee before completion of the resale transaction. The guarantee must provide that a purchaser will be given a full refund if any of the following occurs:

- The event is cancelled.
- The purchaser is denied admission other than due to an act or omission by the purchaser.

- The ticket is not delivered as promised resulting in purchaser's inability to attend event.

Ticket resales are not subject to the admissions tax because the secondary seller is not "giving, offering, managing, or exhibiting" the amusement. The reseller does not fall within the scope of the statute.

Reporting requirement – Internet ticket resellers must report their gross receipts for North Carolina events to the Department of Revenue on monthly basis. Since August 2008, there have been 65 reports, reflecting 17 reporting entities.

BILL ANALYSIS: This proposal would do the following:

- Extend the 3% admissions tax to the gross receipts of a person who is engaged in the business of reselling tickets under G.S. 14-344.1. The gross receipts would exclude the price printed on the face of the ticket. Thus, the tax would be imposed on the difference between the price sold and the face value of the ticket. If the price is not printed on the ticket, the tax would apply to the difference between the amount the reseller paid for the ticket and the amount the reseller charges for the ticket. This same tax provision passed the Senate when Senate Bill 1407 was being considered during the 2008 Regular Session, but it was removed when the bill was considered in the House Finance Committee. This provision would modernize the admissions tax by recognizing the current business model for the sale and resale of tickets, which did not exist at the time the admissions tax was originally enacted in the 1930s. It would also equalize the admissions tax by treating the markup in a resale transaction the same as the face value price in the first sale.
- Prohibit cities or counties from imposing a privilege license tax on Internet ticket resellers.
- Repeal the reporting requirement. The reporting requirement was added to Senate Bill 1407 when the tax provision was removed. The act originally included a sunset, which required the General Assembly to revisit the legislation. At the time, the rationale for the reporting requirement was to provide the General Assembly with data for when it reconsidered the legislation. By taxing these transactions, there is no need for a reporting requirement.
- Provide for the repeal of G.S. 14-344.1 if a court finds that the privilege tax violates the Internet Tax Freedom Act (ITFA) or is otherwise invalid. ITFA temporarily prohibits states from imposing multiple or discriminatory taxes on electronic commerce. A discriminatory tax is one that is not generally imposed and legally collectible on transactions involving similar property, goods, services or information accomplished through other means. Arguments have been raised as to whether this legislation might violate ITFA because it taxes only those ticket resales that occur on the Internet. However, face-to-face ticket resales for greater than face value are generally illegal in North Carolina. As such, an argument can be made that Internet ticket resales are, in fact, given preferential treatment to the extent they are authorized, with no cap, whereas face-to-face ticket resales are essentially prohibited. A similar transaction cannot be conducted by a means other than the Internet. However, since the issue has been raised, the proposal provides that if a court finds that the privilege tax violates ITFA, then the authority to resell tickets on the Internet is repealed.

EFFECTIVE DATE: This provision would become effective January 1, 2011, and would apply to admission tickets sold on or after that date.

RESTORE AMENITIES EXCLUSION

CURRENT LAW: Entertainment venues frequently offer their patrons certain amenities in conjunction with the sale of admission tickets to performances of live entertainment. Those amenities may include parking privileges, preferential or more luxurious seating, access to special concession stands, access to luxury viewing suites, and access to concierge staff. In some cases, the venue will separately state the "seat price" on the face of a ticket with charges over and above that price reflecting the cost of the amenities. In other cases, a purchaser may buy a package or contract for the lease of a suite where the price includes a seat for an event as well as amenities, but the charges are not separately stated.

The admissions tax statute does not specifically address how these amenities are to be taxed. In 1994, a taxpayer requested a written opinion from the Department of Revenue as to whether the admissions tax applied to amenities, and the Department responded that amenities were excludable from the tax. This interpretation was in place for over 15 years, and during that time, the statute has not changed in any substantive way. However, on January 30, 2009, the Department issued a directive, effective the following day, stating that amenities are subject to the admissions tax. Specifically, the directive reads:

> *"Gross receipts are taxes computed on the admission price of the amusement. An admission price is the price paid to enter an event. Effective for tickets for admission sold on or after February 1, 2009, the gross receipts tax is due on the price paid by the customer for admission into an event regardless of whether that price just covers the seat price or also includes amenities."*

BILL ANALYSIS: The Revenue Laws Study Committee considered this issue because it is a matter of tax policy on which the statute is silent and because the Department reversed its longstanding interpretation of the statute despite the fact that it has remained the same. The Committee concluded that the decision of whether amenities should be subject to the admissions tax is one for the Legislature and should not be determined by an interpretive ruling.

Section 1 of the proposal would restore the Department's pre-2009 interpretation of the admissions tax statute by excluding amenities from the tax. If the charges for the amenities are not separately stated on the face of the ticket, then the charge for admission would be equal to the charge for a ticket to the same event that does not include amenities and that is for a seat located directly in front of or closest to a seat that includes amenities.

EFFECTIVE DATE: This provision would become effective for charges for admission received on or after August 1, 2010.

REQUIRE AMPLE NOTICE OF REVISED INTERPRETATIONS

CURRENT LAW: G.S. 105-264 provides that it is the duty of the Secretary of Revenue to interpret all laws administered by the Department. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes an interpretation, a taxpayer who relied on it before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the interpretation was changed and was not paid by reason of reliance upon the interpretation.

The Secretary is permitted to change an interpretation, and that change may apply on and after the effective date of the change, but there is no statutory requirement that the Department provide a certain amount of notice to taxpayers prior to applying a revised interpretation.

BILL ANALYSIS: Section 4 of the proposal would require the Department to provide a certain amount of notice to taxpayers if it revises a prior interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due. Under the proposal, a revised interpretation would not become effective until the sooner of the following:

- For a tax that is payable on a monthly or quarterly basis, the first day of a month that is at least 90 days after the date the revised interpretation is issued.
- For a tax that is payable on an annual basis, the first day of a tax year that begins after the date the revised interpretation is issued.

EFFECTIVE DATE: This provision would become effective when the act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

<u>FISCAL ANALYSIS MEMORANDUM</u>

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. <u>This is not an official fiscal note</u>. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: May 5, 2010

TO: Revenue Laws Subcommittee

FROM: Rodney Bizzell
Fiscal Research Division

RE: 2009-SVxz-17n1

FISCAL IMPACT

Yes (x) No ( ) No Estimate Available ( )

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
General Fund	*** Annual revenue loss of approximately $700,000 ***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY: The bill would exclude from taxation any amenities, such as food or parking, that are included with the admission ticket for an event subject to the 3% privilege tax on amusements. It imposes a 3% privilege tax on the gross receipts of a person who is engaged in the business of reselling tickets on the Internet. The bill would repeal G.S. 14-344.1(e), which calls for a monthly report on receipts from Internet ticket resellers to be submitted to the Department of Revenue.

ASSUMPTIONS AND METHODOLOGY:
The NC Department of Revenue issued a ruling in February of 2009 stating that the 3% tax on amusements applies to the entire price of tickets that include extra amenities, such as food or parking. The proposed bill would clarify that the cost of additional amenities are not subject to the tax. To

determine the impact of this change, the Department compiled monthly amounts of the amusement tax collected in the year prior to the ruling and the year after. The year following the ruling, collections were $689,474 higher.

Several factors can affect the amount of tax paid from one year to the next, including ticket prices and the number of tickets sold, however those variables are not expected to be significantly different for the two years in question. Therefore, the change in revenue is assumed to be primarily attributable to the Department's ruling and the impact of the bill is expected to be a reduction in admissions tax revenue of approximately $700,000.

The 3% gross receipts privilege tax on ticket resellers would be imposed on the difference between the price of the ticket sold and the face price on the ticket. From August 1, 2008 through April 28, 2010, the North Carolina Department of Revenue received 66 reports from 20 ticket resellers. They reported the original cost of the resold tickets as $955,882, with a resold price of $1,503.762.69, and gross receipts of $547,862.69.

Assuming the same rate of filings, grown by the Moody’s Economy.com leisure and hospitality portion of North Carolina’s gross state product, a 3% privilege tax would yield approximately $10,000 annually.

SOURCES OF DATA: NC Department of Revenue, Moody’s Economy.com

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #5

MODERNIZE SALES TAX ON ACCOMMODATIONS

LEGISLATIVE PROPOSAL #5

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2010 REGULAR SESSION OF THE 2009 GENERAL ASSEMBLY

AN ACT TO MODERNIZE THE APPLICATION OF THE SALES TAX ON ACCOMMODATIONS BY RECOGNIZING THAT THE SALES PRICE IS THE PRICE PAID BY THE CONSUMER REGARDLESS OF WHETHER IT IS PAID TO THE ACCOMMODATIONS PROVIDER OR A THIRD PARTY.

SHORT TITLE: Modernize Sales Tax on Accommodations.

PRIMARY SPONSORS: Senator Hartsell
Representative Luebke

BRIEF OVERVIEW: This proposal would require online travel companies to report to providers of accommodations with whom they contract the final sales price charged to a customer for the rental of accommodations for purposes of determining the amount of State and local sales tax and local occupancy tax due. The proposal is not, however, limited only to online companies. Any person who is authorized by the provider of an accommodation to facilitate the rental of and to collect payment for an accommodation would be considered a "retailer" for purposes of determining the sales price. Under the proposal, a facilitator would be required to report the sales price to the provider and would only become liable for the tax due if it understates or fails to report the sales price to the provider. The proposal also clarifies that the rental of a transient accommodation, whether through the provider or a facilitator, is sourced to the location of the accommodation.

FISCAL IMPACT: This proposal is estimated to generate in FY 2009-2010 a General Fund gain of $8.4 million and a gain of $3.7 million in local revenues.

EFFECTIVE DATE: This act would become effective January 1, 2011, and apply to gross receipts derived from accommodations provided on or after that date.

A copy of the proposed legislation, bill analysis, and fiscal analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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BILL DRAFT 2009-SVxz-19 [v.4] (05/03)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/4/2010 5:49:50 PM

Short Title:	Modernize Sales Tax on Accommodations.	(Public)
Sponsors:	Unknown.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE APPLICATION OF THE SALES TAX ON ACCOMMODATIONS BY RECOGNIZING THAT THE SALES PRICE IS THE PRICE PAID BY THE CONSUMER REGARDLESS OF WHETHER IT IS PAID TO THE ACCOMMODATIONS PROVIDER OR A THIRD PARTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.4(a)(3) reads as rewritten:

"**§ 105-164.4. Tax imposed on retailers.**

(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is five and three-quarters percent (5.75%).

…

(3) ~~Operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from the rental of any rooms, lodgings, or accommodations furnished to transients for a consideration. This tax does not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.~~

~~As used in this subdivision, the term "persons who rent to transients" means (i) owners of private residences and cottages who rent to transients and (ii) rental agents, including "real estate brokers" as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable.~~ A tax at the general rate applies to the sales price of the rental of an accommodation to a transient and to other gross receipts derived from the rental of an accommodation to a transient. The sales price of the rental of an accommodation to a transient is determined as if the rental were a service. An "accommodation" is a hotel room, a motel room, a residence, a cottage, or a similar space for occupancy by an individual. The tax does not apply to a residence or a cottage that is rented for less than 15 days in a calendar year or to an accommodation provided to the same person for a period of 90 or more continuous days.

A person who provides an accommodation to a transient is considered a retailer under this Article. A person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax imposed by this subdivision. The liability of a rental agent for the tax imposed by this subdivision relieves the provider of the accommodation from liability. A rental agent includes a real estate broker, as defined in G.S. 93A-2.

A person who, by written contract, is not the rental agent of the provider of an accommodation but is authorized by the provider to facilitate the rental of the accommodation and to charge a transient for the rental is considered a retailer under this Article for the purpose of determining the sales price of the accommodation. Accordingly, charges designated as facilitation fees or similar fees are considered charges necessary to complete the rental of the accommodation and are included in the sales price. A person who enters into a contract with the provider of an accommodation to a transient to facilitate the rental of an accommodation must report the sales price to the provider of the accommodation. The provider must remit tax on the sales price reported by the facilitator. A facilitator is not liable for tax due on the sales price reported to the provider. A facilitator that does not report the sales price to the provider or that understates the sales price reported to the provider is liable for tax due on the unreported or underreported sales price."

SECTION 2. G.S. 105-164.4B is amended by adding a new subsection to read:

"(e) Accommodations. – The rental of a transient accommodation is sourced to the location of the accommodation."

SECTION 3. G.S. 153A-155(c) reads as rewritten:

"(c) Collection. ~~Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation.~~ A person who is required to remit to the Department of Revenue the State sales tax on accommodations imposed by G.S. 105-164.4(a)(3) is required to remit a room occupancy tax to the taxing county on and after the effective date of the levy of the room occupancy tax. The room occupancy tax applies to the same gross receipts as the State sales tax on accommodations and is calculated in the same manner as that tax. A rental agent or a person who facilitates the rental of an accommodation has the same responsibility and liability under the room occupancy tax as the rental agent or facilitator has under the State sales tax on accommodations.

If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered, the ~~operator~~ person offering the package may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the ~~operator's~~person's business records kept in the ordinary course of business and ~~collect~~ calculate tax on the allocated price of the taxable accommodation.

~~The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business~~ The provider of an accommodation must separately state the room occupancy tax. Room occupancy taxes paid to a provider of an accommodation are paid to the provider as trustee for and on account of the taxing county. ~~The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business.~~

The taxing county shall ~~design, print,~~ design and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. ~~An operator of a business~~ A provider of accommodations who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the ~~operator~~ provider for State sales and use tax."

SECTION 4. G.S. 153A-155(g) reads as rewritten:

"(g) Applicability. – Subsection (c) of this section applies to all counties that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of a local act, subsection (c) supersedes that provision. The remainder of this ~~This~~ section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Madison, Martin, McDowell, Montgomery, Nash, New Hanover, New Hanover County District U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, Washington, and Wilson Counties, to Surry County District S, to Watauga County District U, to Yadkin County District Y, and to the Township of Averasboro in Harnett County and the Ocracoke Township Taxing District."

SECTION 5. G.S. 160A-215(c) reads as rewritten:

"(c) Collection. ~~Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation.~~ A person who is required to remit to the Department of Revenue the State sales tax on accommodations imposed by G.S. 105-164.4(a)(3) is required to remit a room occupancy tax to the taxing city on and after the effective date of the levy of the room occupancy tax. The room occupancy tax applies to the same gross receipts as the State sales tax on accommodations and is calculated in the same manner as that tax. A rental agent or a person who facilitates the rental of an accommodation has the same responsibility and liability under the room occupancy tax as the rental agent or facilitator has under the State sales tax on accommodations.

If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered, the ~~operator~~ person offering the package may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the ~~operator's~~person's business records kept in the ordinary course of business and ~~collect~~ calculate tax on the allocated price of the taxable accommodation.

~~The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business~~ The provider of an accommodation must separately state the room occupancy tax. Room occupancy taxes paid to a provider of an accommodation are paid to the provider as trustee for and on account of the taxing city. ~~The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business.~~

The taxing city shall ~~design, print,~~ design and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the ~~operator~~ provider for State sales and use tax."

SECTION 6. G.S. 160A-215(g) reads as rewritten:

"(g) Applicability. – Subsection (c) of this section applies to all cities that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of a local act, subsection (c) supersedes that provision. The remainder of this ~~This~~ section applies only to Beech Mountain District W, to the Cities of Belmont, Conover, Eden, Elizabeth City, Gastonia, Goldsboro, Greensboro, Hickory, High Point, Jacksonville, Kings Mountain, Lenoir, Lexington, Lincolnton, Lowell, Lumberton, Monroe, Mount Airy, Mount Holly, Reidsville, Roanoke Rapids, Salisbury, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Benson, Blowing Rock, Boiling Springs, Boone, Burgaw, Carolina Beach, Carrboro, Cramerton, Dallas, Dobson, Elkin, Franklin, Jonesville, Kenly, Kure Beach, Leland, McAdenville, Mooresville, Murfreesboro, North Topsail Beach, Pilot Mountain, Ranlo, Selma, Smithfield, St. Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and Brunswick Counties."

SECTION 7. This act becomes effective January 1, 2011, and applies to gross receipts derived from accommodations provided on or after that date.

Bill Draft 2009-SVxz-19: Modernize Sales Tax on Accommodations.

2009-2010 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	May 5, 2010
Introduced by:		**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	2009-SVxz-19		

SUMMARY: This proposal would require online travel companies to report to providers of accommodations with whom they contract the final sales price charged to a customer for the rental of accommodations for purposes of determining the amount of State and local sales tax and local occupancy tax due. The proposal is not, however, limited only to online companies. Any person who is authorized by the provider of an accommodation to facilitate the rental of and to collect payment for an accommodation would be considered a "retailer" for purposes of determining the sales price. Under the proposal, a facilitator would be required to report the sales price to the provider and would only become liable for the tax due if it understates or fails to report the sales price to the provider. The proposal also clarifies that the rental of a transient accommodation, whether through the provider or a facilitator, is sourced to the location of the accommodation.

CURRENT LAW: Gross receipts derived from the rental of transient accommodations are subject to State and local sales tax at the general rate, which is currently 7.75% in most counties. Many counties (over 70) and cities (over 85) also levy an occupancy tax on accommodations, with rates ranging from 1% to 6%. The tax does not apply to any private residence or cottage rented for less than 15 days in a calendar year or to any lodging supplied to the same person for 90 or more continuous days.

Deemed "retailers" under the Sales Tax Article, operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are required to collect and remit the tax due. This includes rental agents or real estate brokers who rent private residences or cottages to transients on behalf of the owners. However, under the plain language of the statute, online intermediaries that list available rooms and collect payment for the rental of those rooms are not retailers required to collect local occupancy tax on accommodations because they are not "operators" of those accommodations. This interpretation was the holding in the Fourth Circuit case of <u>Pitt County v. Hotels.com</u>.

Generally speaking, a person who wishes to make a reservation for accommodations may contact the accommodation directly, use the services of a commissioned travel agent, or make reservations through an online "intermediary," such as Expedia or Travelocity. Intermediaries contract with accommodation providers for the right to facilitate the reservation of the provider's rooms through their website. The intermediaries have no ownership interest or legal right to the rooms, nor do they bear any risk of loss if rooms are not booked through their site. Under the contract, the intermediary agrees to pay the provider a discounted room rate and then adds a "facilitation fee" or other similarly-named charge to the discounted room rate and also collects an amount that reflects anticipated taxes plus a nominal service or processing fee. Generally speaking, the facilitation fee is not disclosed to the customer or to the provider, and the amount collected for "taxes and fees" is not itemized.

With regard to payment, a consumer who books with the provider directly or uses a travel agent typically provides the hotel or agent with a credit card number to guarantee the reservation and then pays the hotel directly at the time of check-out. A consumer who books through an intermediary pays up front and prior to occupancy. This business model is known as the "merchant model" or the "prepaid model." Under this model, once the customer occupies the room, the provider bills the intermediary for the discounted room rate plus State and local sales tax and occupancy tax, if applicable, based on that rate. Since the provider does not know the final room rate paid by the customer, it cannot collect sales and occupancy tax based on that amount.

There is little debate that intermediaries are required to remit sales and occupancy taxes to the accommodations providers based on the discounted room rate that they have negotiated. The central issue is to what extent intermediaries may be required to collect sales tax and occupancy tax based on the marked-up rate that they ultimately charge consumers, which includes their service fees.

BILL ANALYSIS: This proposal does the following:

- It provides that the State sales tax on accommodations applies to the *sales price* of the rental and to other gross receipts derived from that rental. "Sales price" is currently defined as the total amount or consideration for which tangible personal property, digital property, or services are sold, leased, or rented and it essentially includes the retailer's costs as well as charges for any services necessary to complete the sale. For purposes of the sales tax on accommodations, the proposal provides that the sales price will be determined as if the rental of the accommodation is a service.
- It provides that a person, other than a rental agent, who, by written contract, is authorized to facilitate the rental of and collect payment for the rental of accommodations is considered a retailer for purposes of determining the sales price of the accommodation. The rationale for incorporating the term "sales price" and deeming a facilitator to be a retailer for purposes of calculating the sales price is to capture the total cost paid by the consumer for an accommodation regardless of whether it is paid to a hotel directly or to a third party that charges facilitation or other service fees in addition to the room rate.
- It requires a person who enters into a contract with the provider of an accommodation to facilitate the rental of accommodations to report the sales price to the provider of the accommodation. The provider is required to remit tax on the sales price reported by the facilitator. The facilitator is not liable for the tax due unless it underreports or fails to report the tax due.
- It codifies the current practice with regard to sourcing transactions for the rental of transient accommodations by stating that they are sourced to the location of the accommodation.
- It makes conforming changes to the statute that sets out the uniform provisions for occupancy taxes. In doing so, it imposes the same responsibility and liability on a person who facilitates the rental of an accommodation with regard to occupancy tax as that person would have for State sales tax on accommodations. It also makes clear that the room occupancy tax applies to the same gross receipts and is calculated in the same manner as the State sales tax on accommodations.

EFFECTIVE DATE: This act would become effective January 1, 2011, and apply to gross receipts derived from accommodations provided on or after that date.

2009-SVxz-19-SMSV-111 v4

LEGISLATIVE PROPOSAL #6

IMPROVE TAX & DEBT COLLECTION PROCESS

LEGISLATIVE PROPOSAL #6

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2010 REGULAR SESSION OF THE 2009 GENERAL ASSEMBLY

AN ACT TO IMPROVE THE COLLECTION OF TAX DEBTS AND OTHER DEBTS OWED THE STATE.

SHORT TITLE: Improve Tax & Debt Collection Process.

PRIMARY SPONSORS: Senator Brunstetter
Representative McGee

BRIEF OVERVIEW: This proposal, recommended by the Department of Revenue and developed in collaboration with the Office of State Controller and the North Carolina Bankers Association, would improve the tax and debt collection process of the Department of Revenue by:

- Expanding the use of the Setoff Debt Collection Act as follows: allow debts owed by a business to be set off against a tax refund due the business, allow a setoff against any type of tax refund, and allow a community college to submit for setoff debts owed the college.
- Authorizing the use of electronic process for sending notice of garnishment.
- Providing for a data match between the Department of Revenue and financial institutions holding accounts of delinquent taxpayers.
- Expanding the Statewide Accounts Receivable Program to allow for collection of the following accounts receivable by setoff against payments the State owes to individuals and businesses: accounts receivable that are submitted to the Department of Revenue under the Setoff Debt Collection Act and overdue tax debts.

FISCAL IMPACT:

EFFECTIVE DATE: Section 2.1 of the act becomes effective January 1, 2011. This section streamlines the attachment and garnishment process by providing for a data match between financial institutions and the Department of Revenue. The remainder of the act is effective when it becomes law.

A copy of the proposed legislation and a bill analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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BILL DRAFT 2009-LAz-23 [v.25] (03/23)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/4/2010 10:01:53 AM

Short Title:	Improve Tax & Debt Collection Process.	(Public)
Sponsors:	.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE COLLECTION OF TAX DEBTS AND OTHER DEBTS OWED THE STATE.

The General Assembly of North Carolina enacts:

PART I. CHANGES TO DEBT SETOFF PROGRAMS

SECTION 1.1. G.S. 147-86.20(1) reads as rewritten:

"§ 147-86.20. Definitions.

The following definitions apply in this Article:

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

…"

SECTION 1.2. G.S. 147-86.22 reads as rewritten:

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

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

(1) Monitor the State's accounts receivable collection efforts.

(2) Coordinate information, systems, and procedures between State agencies to maximize the collection of past-due accounts receivable.

(3) Adopt policies and procedures for the management and collection of accounts receivable by State agencies.

(4) Establish procedures for writing off accounts ~~receivable and for determining when to end efforts to collect accounts receivable after they have been written off.~~receivable.

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

The State Controller shall establish policies that allow accounts receivable to be payable under certain conditions by electronic payment. These policies shall be established with the concurrence of the State Treasurer. In addition, any policies that apply to debts payable to or through the office of a clerk of superior court or a magistrate shall be established with the concurrence of the Administrative Officer of the Courts. The Administrative Officer of the Courts may also establish policies otherwise authorized by law that apply to these debts as long as those policies are not inconsistent with the Controller's policies.

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

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

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

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

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

SECTION 1.3. G.S. 147-86.25 reads as rewritten:

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

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

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

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

~~A program shall provide that, before final setoff can occur, the State agency servicing the debt must notify the debtor of the proposed setoff and of the debtor's right to contest the setoff through an administrative hearing and judicial review. A proposed setoff by a State agency that is a "claimant agency" under Chapter 105A of the General Statutes shall be conducted in accordance with the procedures the State agency must follow under that Chapter. A proposed setoff by a State agency that is not a "claimant agency" under Chapter 105A of the General Statutes shall be conducted under Articles 3 and 4 of Chapter 150B of the General Statutes.~~"

SECTION 1.4. G.S. 105A-2 reads as rewritten:

"§ 105A-2. Definitions.

The following definitions apply in this Chapter:

…

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

…

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

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

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

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

c. A community college."

SECTION 1.5. G.S. 105A-3(c) reads as rewritten:

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

SECTION 1.6. G.S. 105A-14(a) reads as rewritten:

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

SECTION 1.7. G.S. 105-259(b)(18) reads as rewritten:

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

…

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

…"

PART II. CHANGES TO ATTACHMENT AND GARNISHMENT PROCESS

SECTION 2.1. G.S. 105-242(b) reads as rewritten:

"(b) ~~Garnishment and Attachment.~~Attachment and Garnishment. – Intangible property that belongs to a taxpayer, is owed to a taxpayer, or has been transferred by a taxpayer under circumstances that would permit it to be levied upon if it were tangible property is subject to attachment and garnishment in payment of a tax that is due from the taxpayer and is collectible under G.S. 105-241.22. Intangible personal property includes bank deposits, rent, salaries, wages, property held in the Escheat Fund, and any other property incapable of manual levy or delivery. G.S. 105-242.1 sets out the procedure for attachment and garnishment of intangible property.~~A~~

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

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

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

SECTION 2.2. G.S. 105-242.1 reads as rewritten:

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

(a) Notice. – G.S. 105-242 specifies when intangible property is subject to attachment and garnishment. Before the Department attaches and garnishes intangible property in payment of a tax, the Department must send the garnishee a notice of garnishment. The notice must be sent in accordance with the methods authorized in G.S. 105-241.20 ~~or by registered or certified~~

~~mail.~~or, with the agreement of the garnishee, by electronic means. The notice must contain all of the following ~~information:~~information, unless the notice is an electronic notice subject to subsection (a1) of this section:

(1) The taxpayer's ~~name, address, and social security number or federal identification number.~~name.

(2) The ~~type of tax the taxpayer owes and the tax periods for which the tax is owed.~~taxpayer's social security number or federal identification number.

(3) The amount of tax, interest, and penalties the taxpayer owes.

(4) An explanation of the liability of a garnishee for tax owed by a taxpayer.

(5) An explanation of the garnishee's responsibility concerning the notice.

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

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

Upon receipt of ~~the~~ a written response, the Department must contact the garnishee and schedule a conference to discuss the response or inform the garnishee of the Department's position concerning the response. If the Department does not agree with the garnishee on the garnishee's liability, the Department may proceed to enforce the garnishee's liability for the tax by sending the garnishee a notice of proposed assessment in accordance with G.S. 105-241.9.

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

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

SECTION 2.3. G.S. 53B-4(2) reads as rewritten:

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

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

…

(2) Authorization under ~~G.S. 105-251~~G.S. 105-242 or G.S. 105-258."

PART III. EFFECTIVE DATE

SECTION 3.1. Section 2.1 of this act becomes effective January 1, 2011. The remainder of this act is effective when it becomes law.

Bill Draft 2009-LAz-23:
Improve Tax & Debt Collection Process.

2009-2010 General Assembly

Committee:	Revenue laws Study Committee	**Date:**	May 4, 2010
Introduced by:		**Prepared by:**	Martha Walston Committee Counsel
Analysis of:	2009-LAz-23		

SUMMARY: ***This proposal, recommended by the Department of Revenue and developed in collaboration with the Office of State Controller and the North Carolina Bankers Association, would improve the tax and debt collection process of the Department of Revenue by:***

- ***Expanding the use of the Setoff Debt Collection Act as follows: allow debts owed by a business to be set off against a tax refund due the business, allow a setoff against any type of tax refund, and allow a community college to submit for setoff debts owed the college.***
- ***Authorizing the use of electronic process for sending notice of garnishment.***
- ***Providing for a data match between the Department of Revenue and financial institutions holding accounts of delinquent taxpayers.***
- ***Expanding the Statewide Accounts Receivable Program to allow for collection of the following accounts receivable by setoff against payments the State owes to individuals and businesses: accounts receivable that are submitted to the Department of Revenue under the Setoff Debt Collection Act and overdue tax debts.***

BILL ANALYSIS:

Expansion of Setoff Debt Collection Act

The Setoff Debt Collection Act, enacted in 1997, authorizes the Department of Revenue to set off an individual's income tax refund against a debt the individual owes a State agency or local agency.[1] Under the Act, a claimant agency sends the Department notice of the debt and the Department immediately sets off the debt against the tax refund and notifies the taxpayer and the claimant agency.

The proposal in Sections 1.4 through 1.7 would expand the Setoff Debt Collection Act to allow community colleges to collect debts owed to them through setoff of tax refunds and to allow debts that a business owes a claimant agency to be set off against the entity's tax refund. Currently, the Act only allows debts owed to claimant agencies by individuals to be set off against the individual's income tax refund. The proposal also expands the Act to apply to any type of tax refund, not just income tax refunds.

Notice of Garnishment by Electronic Process

The Department of Revenue is authorized by statute to attach and garnish intangible property in payment of taxes owed to the Department. The kinds of property that are subject to attachment and garnishment are wages and salaries, rents, bank deposits, the proceeds of property subject to levy, and property in the Escheat Fund. When the property sought to be attached is the taxpayer's checking account, the garnishee is the bank. When the property is wages, the taxpayer's employer is the

[1] State agency includes a unit of the executive, legislative, or judicial branch of State government and a local agency to the extent it administers a program supervised by DHHS. A local agency includes a county, municipality, water and sewer authority, regional joint agency created by interlocal agreement, public health authority, metropolitan sewerage district, or sanitary district.

garnishee. No more than 10% of a taxpayer's wages or salary per month is subject to attachment and garnishment. Current law requires that the notice of garnishment must be delivered in person or by mail.

The proposal in Section 2.2 would authorize electronic notice, if the garnishee agrees to this method and the Department and garnishee have an agreement that establishes the protocol for electronic notice.

The proposal would also streamline the process if the garnishee is a financial institution by reducing the time period for filing a response to the notice of garnishment from 30 days to 20 days and by releasing the notice of garnishment when the institution complies with the notice. All other garnishees will continue to receive a notice of release. Streamlining would be consistent with the current garnishment practice with banks wherein the Department faxes notice of garnishment to a bank and the bank then sends money in the account to the Department within 10 to 15 days.

A "financial institution" is defined as a banking corporation, trust company, savings and loan association, credit union, or other entity principally engaged in the business of lending money or receiving or soliciting money on deposit. (G.S. 53B-2).

Data Match between Financial Institutions and the Department of Revenue

The proposal in Section 2.1 further streamlines the attachment and garnishment process with financial institutions. The Department would be authorized to submit information to a financial institution on a quarterly basis, or with the agreement of the financial institution, more frequently. The information would identify any delinquent taxpayer to a financial institution and require the financial institution to notify the Department of the amount the institution may hold that belongs to the taxpayer. The Department will reimburse the financial institution for the cost of providing the information. The cost may not exceed the amount that the Department of Health and Human Services currently pays to financial institutions for conducting a data match in order to attach and garnish the account of an absent noncustodial parent.[2]

The federal government has recently issued a proposed rule to implement statutory restrictions on the garnishment of federal benefit payments. These payments are protected under federal law from garnishment and include Social Security benefits, Supplemental Security Income benefits, and VA benefits. The rule sets forth uniform procedures for financial institutions to follow in order to minimize the hardships encountered by federal benefit payment recipients whose accounts are frozen pursuant to a garnishment order. The rule also assists financial institutions to determine whether exempt funds were directly deposited to the account.

Expansion of Statewide Accounts Receivable

The Statewide Accounts Receivable Program, enacted in 1993, requires the State Controller to monitor accounts receivable owed to State agencies, to adopt procedures for the management and collection of accounts receivable, and to establish procedures for writing off accounts receivable.[3] The Program also provides for written-off accounts receivable to be set off against payments the State owes to debtors. A written-off accounts receivable is one that has been removed from a State agency's accounts receivable records.

[2] The DHHS and financial institutions have developed a data match system that requires a financial institution to provide DHHS the following information on a quarterly basis in order to secure child support: name, SSN, address, telephone number, account numbers, and other identifying data for any person who maintains an account at the financial institution.

[3] An account receivable is an asset of the State reflecting a debt owed to the State. The term includes claims, damages, fees, fines, forfeitures, loans, overpayments, and tuition as well as penalties, interest and other costs authorized by law. The term does not include court costs or fees.

The proposal in Sections 1.1 through 1.3 would expand the Statewide Accounts Receivable Program as follows:

- Expand the definition of "accounts receivable" to include taxes.
- Allow debts that have been submitted to the Department of Revenue under the Setoff Debt Collection Act to be set off against payments the State owes to these debtors. The following is an example of how this proposal would work. The Department of Revenue will give the State Controller a list of debtors under the Setoff Debt Collection Act. The State Controller will then check to see if any of these debtors are vendors that are owed money by the State for services or goods received by the State. The State Controller will then deduct the amount of the debt from the amount owed by the State. The State Controller will send this amount to the claimant agency owed the debt.

EFFECTIVE DATE: Section 2.1 of the act becomes effective January 1, 2011. This section streamlines the attachment and garnishment process by providing for a data match between financial institutions and the Department of Revenue. The remainder of the act is effective when it becomes law.

2009-LAz-23-SMLA-89 v10

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: May 3, 2010

TO: Revenue Laws Study Committee

FROM: Rodney Bizzell
Fiscal Research Division

RE: 2009-LAz-23

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES:					
General Fund	***Approximately $3 million annually in additional collections - see assumptions and methodology***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue; NC Office of State Controller; NC Community Colleges

EFFECTIVE DATE: January 1, 2011

BILL SUMMARY:
The proposal is a recommendation of the Department of Revenue and was developed in collaboration with the Office of State Controller and the North Carolina Bankers Association. It would improve the Department's tax and debt collection process by:

- Expanding the use of the Setoff Debt Collection Act as follows: allow debts owed by a business to be set off against a tax refund due the business, allow a setoff against any type of tax refund, and allow a community college to submit for setoff debts owed the college.

- Authorizing the use of electronic process for sending notice of garnishment.

- Providing for a data match between the Department of Revenue and financial institutions holding accounts of delinquent taxpayers.

- Expanding the Statewide Accounts Receivable Program to allow for collection of the following accounts receivable by setoff against payments the State owes to individuals and businesses: accounts receivable that are submitted to the Department of Revenue under the Setoff Debt Collection Act and overdue tax debts.

ASSUMPTIONS AND METHODOLOGY:
The proposal would enable the Department of Revenue to increase debt and tax collections by allowing for businesses debts to be setoff against tax refunds, and by allowing for debt setoffs against any type of tax refund. The proposal also creates a number of efficiencies to streamline the attachment and garnishment process, including identifying bank accounts of delinquent taxpayers through data matching between the Department and financial institutions. In addition, the proposal would allow for collection of delinquent taxes and debts by setoff against payments the State owes to these debtors.

The Department of Revenue anticipates that the proposal would result in additional collections of approximately $750,000 per quarter, or $3 million annually. Because of the January 1st effective date, the first year of collections would be half of the full-year amount, or $1.5 million.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #7

EXPAND EXCEPTION TO PUV OWNERSHIP REQUIREMENTS

LEGISLATIVE PROPOSAL #7

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2010 REGULAR SESSION OF THE 2009 GENERAL ASSEMBLY

AN ACT TO EXPAND THE EXCEPTIONS TO OWNERSHIP REQUIREMENTS FOR AGRICULTURAL LAND UNDER THE PROPERTY TAX PRESENT-USE VALUE PROGRAM.

SHORT TITLE: Expand PUV.

PRIMARY SPONSORS: Senator Tillman
Representative Brubaker

BRIEF OVERVIEW: This proposal expands the exception to ownership requirements in the Present-Use Value (PUV) program for property tax purposes. The exception applies to newly acquired land that is not being used for a farm purpose. The owner, however, must already own land that is in the PUV program and used for agricultural purposes, and the owner must begin using the recently acquired land for agricultural purposes within one year of its acquisition.

FISCAL IMPACT:

EFFECTIVE DATE: This act becomes effective for taxes imposed for taxable years beginning on or after July 1, 2011, and applies to property acquired on or after January 1, 2010.

A copy of the proposed legislation and a bill analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

U **D**

BILL DRAFT 2009-LAz-24 [v.6] (04/08)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/20/2010 11:09:49 AM

Short Title:	Expand PUV.	(Public)
Sponsors:	Unknown.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE EXCEPTIONS TO OWNERSHIP REQUIREMENTS FOR AGRICULTURAL LAND UNDER THE PROPERTY TAX PRESENT-USE VALUE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-277.3(b2) reads as rewritten:

"§ 105-277.3. Agricultural, horticultural, and forestland – Classifications.

…

(b2) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2008)** Exceptions to Ownership Requirements. – Notwithstanding the provisions of subsections (b) and (b1) of this section, land may qualify for classification in the hands of the new owner if ~~all of the conditions listed in~~ either subdivision of this subsection ~~are~~ is met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land.

(1) Continued use. – If the land qualifies for classification in the hands of the new owner under the provisions of this subdivision, then any deferred taxes remain a lien on the land under G.S. 105-277.4(c), the new owner becomes liable for the deferred taxes, and the deferred taxes become payable if the land fails to meet any other condition or requirement for classification. Land qualifies for classification in the hands of the new owner if all of the following conditions are met:

a. The land was appraised at its present use value at the time title to the land passed to the new owner.

b. The new owner acquires the land and continues to use the land for the purpose for which it was classified under subsection (a) of this section while under previous ownership.

c. The new owner has timely filed an application as required by G.S. 105-277.4(a) and has certified that the new owner accepts liability for any deferred taxes and intends to continue the present use of the land.

(2) Expansion of existing unit. – Land qualifies for classification in the hands of the new owner ~~if, at~~if one of the following conditions listed in this subdivision is met. The new owner must timely file an application as required by G.S. 105-277.4(a). The conditions are:

a. At the time title passed to the new owner, the land was not appraised at its present-use value but was being used for the same purpose and was eligible for appraisal at its present-use value as other land already owned by the new owner and classified under subsection (a) of this section.

b. At the time title passed to the new owner, the land was not eligible for appraisal at present-use value, but the new owner owns other land that is classified as agricultural land under subsection (a) of this section and acquires the new land for agricultural use. The recently acquired land loses its present-use value eligibility, if the new owner does not begin using the land as agricultural land within one year from the date of acquisition."

SECTION 2. This act becomes effective for taxes imposed for taxable years beginning on or after July 1, 2011, and applies to property acquired on or after January 1, 2010.

Bill Draft 2009-LAz-24: Expand PUV.

2009-2010 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	April 15, 2010
Introduced by:		**Prepared by:**	Martha Walston Committee Counsel
Analysis of:	2009-LAz-24		

SUMMARY: This proposal expands the exception to ownership requirements in the Present-Use Value (PUV) program for property tax purposes. The exception applies to newly acquired land that is not being used for a farm purpose. The owner, however, must already own land that is in the PUV program and used for agricultural purposes, and the owner must begin using the recently acquired land for agricultural purposes within one year of its acquisition.

CURRENT LAW: In order to be classified as agricultural land, horticultural land, or forestland under the Present-Use Value (PUV) program and to receive a lower PUV appraised value in lieu of a fair market value appraisal, the land must meet certain ownership, use, and size requirements. The ownership requirements are as follows:

<u>Individual ownership</u>
Land owned by an individual must meet one of the following ownership requirements: (1) be the owner's place of residence as of January 1, (2) be owned by the current owners or a relative for four full years preceding January 1 of the year for which application is made, or (3) if transferring from a business entity or trust to an individual, the property must have been receiving present-use value at the time of transfer, and the individual must have been a member of the entity or a beneficiary of the trust.

<u>Business entity or trust ownership</u>
Land owned by a business entity or trust must have been owned by the business entity or by one or more of the members of the business entity or by the trust or one or more of the creators of the trust for the four years preceding January 1 of the year for which application is made.

<u>Exceptions to ownership requirements</u>
There are two exceptions to the ownership requirements: (1) where PUV land is transferred and the new owner continues to use the land for its present use, and (2) where an existing tract of PUV land is expanded by acquiring land that is eligible to be in the PUV program.

1. Land immediately qualifies for the PUV program if all of the following conditions are met:
   - The land was appraised at its PUV at the time title passed to the new owner.
   - The new owner will continue to use the land for the same PUV purpose it was classified for under the previous ownership.
   - The land will continue to meet the applicable size requirement. If the new owner already has a qualifying tract of the same PUV classification, the transferred land can be less than the minimum initial required acreage if the land can properly be considered an additional tract of the existing farm unit.[1]

[1] A farm unit is defined as one or more tracts of agricultural land, horticultural land, or forestland. Multiple tracts must be under the same ownership and be of the same type of classification. If the multiple tracts are located within different counties, they must be within 50 miles of a tract qualifying under the PUV program. (G.S. 105-277.2(7))

- The new owner must file an application for PUV within 60 days of the date of transfer.
- The new owner certifies that he or she accepts liability for any deferred taxes that exists.

2. Land qualifies for the PUV program for the next year if all of the following conditions are met:

   - At the time of transfer, the new owner owned other land already in PUV.
   - The newly acquired land was not appraised at PUV, but at the time of transfer it was being used for the same purpose as the PUV land already owned by the new owner.
   - At the time of transfer, the land being transferred met the production and sound management requirements.
   - The new owner timely files a new application during the next listing period, typically the month of January.[2]

BILL ANALYSIS: The proposal would allow a third exception to the ownership requirements under the PUV program if all of the following requirements are met:

- The owner acquires land that is not eligible for the PUV program at the time of transfer.
- The owner already owns land classified as agricultural land in the PUV program.
- The new owner begins using the newly acquired land as agricultural land within one year of the date of its acquisition.
- A timely application is filed.

EFFECTIVE DATE: This act becomes effective for taxes imposed for taxable years beginning on or after July 1, 2011, and applies to property acquired on or after January 1, 2010.

2009-LAz-24-SMLA-88 v4

[2] Since land attempting to qualify under this exception is not in PUV at the time of transfer, the land will need to qualify under an initial application. An initial application for PUV should be filed during the regular listing period of the next tax year.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: May 4, 2010

TO: Revenue Laws Study Committee

FROM: Rodney Bizzell
Fiscal Research Division

RE: 2009-LAz-24

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES:					
Local Governments	***Insignificant Revenue Loss for Local Governments***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Local Governments, NC Department of Revenue

EFFECTIVE DATE: Taxable Years beginning on or after July 1, 2011.

BILL SUMMARY:
This proposal expands the exception to ownership requirements in the Present-Use Value (PUV) program for property tax purposes. The exception applies to newly acquired land that is not being used for a farm purpose. The owner, however, must already own land that is in the PUV program and used for agricultural purposes, and the owner must begin using the recently acquired land for agricultural purposes within one year of its acquisition.

Source: Committee Counsel Bill Summary

ASSUMPTIONS AND METHODOLOGY:
The Present Use Value (PUV) program provides for land that is being used for agriculture, horticulture or forestland to be taxed based on the value of its current use rather than the market value. The present use value is generally much lower than market value since it does not reflect the potential use of the property for other purposes.

The proposal would allow an owner who already owns agricultural land in the PUV program to acquire land and enroll it in the PUV program. The recently acquired land does not have to be eligible for the PUV program, but the owner must use the land for an agricultural purpose within one year of acquiring it and meet the other eligibility requirements of the program. Based on discussions with the Department of Revenue, the impact of this change is expected to be limited and the fiscal impact on property tax revenues is likely to be insignificant.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #8

NO NONVOTED LOCAL DEBT FOR COMPETING SYSTEM

LEGISLATIVE PROPOSAL #8

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2010 REGULAR SESSION OF THE 2009 GENERAL ASSEMBLY

AN ACT TO ENSURE THAT A LOCAL GOVERNMENT THAT COMPETES WITH PRIVATE COMPANIES IN PROVIDING COMMUNICATION SERVICES HAS THE SUPPORT OF ITS CITIZENS IN FINANCING THOSE SERVICES AND TO CONTINUE THE REVENUE LAWS STUDY COMMITTEE'S REVIEW OF THE TAX AND ECONOMIC DEVELOPMENT IMPACTS OF LOCAL GOVERNMENT OWNED AND OPERATED COMMUNICATION SERVICES.

SHORT TITLE: No Nonvoted Local Debt for Competing System.

PRIMARY SPONSOR: Senator Hoyle

BRIEF OVERVIEW: This bill does two things:

- It would restrict the issuance by a local government of nonvoted debt in the form of certificates of participation for the purpose of financing a communication system, such as a cable system or a system that provides internet access service.
- It would authorize the Revenue Laws Study Committee to continue to study local government owned and operated communication services.

FISCAL IMPACT:

EFFECTIVE DATE: This proposal would become effective when it becomes law.

A copy of the proposed legislation and a bill analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S **D**

BILL DRAFT 2009-TD-33 [v.3] (05/03)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/4/2010 8:31:39 AM

Short Title:	No Nonvoted Local Debt For Competing System.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT A LOCAL GOVERNMENT THAT COMPETES WITH PRIVATE COMPANIES IN PROVIDING COMMUNICATION SERVICES HAS THE SUPPORT OF ITS CITIZENS IN FINANCING THOSE SERVICES AND TO CONTINUE THE REVENUE LAWS STUDY COMMITTEE'S REVIEW OF THE TAX AND ECONOMIC DEVELOPMENT IMPACTS OF LOCAL GOVERNMENT OWNED AND OPERATED COMMUNICATION SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-20 is amended by adding a new subsection to read:

"(e2) Communication System. – This section does not apply to an external communication system. A unit of local government may not enter into a contract under this section to purchase, or finance or refinance the purchase of, property for use in an external communication system or to finance or refinance the construction or repair of fixtures or improvements for use in an external communication system. A communication system is a system that provides broadband service or other internet access service, cable service, telecommunications service, video programming service, or a combination of these services. The terms "cable service," "telecommunications service," and "video programming service" have the same meanings as in G.S. 105-164.3. A communication system is external if it provides services to a person who is not a unit of local government or a part of that unit."

SECTION 2. Sections 7.1 and 7.2 of Chapter 574 of the 2009 Session Laws authorize the Revenue Laws Study Committee to study local government owned and operated communication services and to report its findings to the 2010 Session of the 2009 General Assembly. The Revenue Laws Study Committee may continue the study authorized by those sections and may report its findings and any recommended legislation to the 2011 General Assembly.

SECTION 3. This act is effective when it becomes law. This act does not affect contracts entered into under G.S. 160A-20 before the effective date of this act.

Bill Draft 2009-TD-33:
No Nonvoted Local Debt For Competing System.

2009-2010 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	May 10, 2010
Introduced by:		**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	2009-TD-33		

SUMMARY: This bill would (1) restrict the issuance by a local government of nonvoted debt in the form of certificates of participation for the purpose of financing a communication system, such as a cable system or a system that provides internet access service; and (2) authorize the Revenue Laws Study Committee to continue to study local government owned and operated communication services.

CURRENT LAW: Under G.S. 160A-311, cities are authorized to operate a number of public enterprises and to finance these enterprises. One of the authorized public enterprises is a cable television system. A North Carolina Court of Appeals case, *BellSouth Telecommunications, Inc. v. City of Laurinburg, 168 N.C. App. 75, 606 S.E. 2d 721 (2005),* interprets the statutory authorization to operate a cable television system to include operation of a fiber optic network. Morganton (CoMPAS Cable TV), Wilson (Greenlight), and Mooresville and Davidson (MiConnection) currently offer cable and internet service as a public enterprise. Salisbury is currently constructing a system to provide these services.

All of the cities that currently operate a cable and internet system financed the system through the installment purchase contract method authorized by G.S. 160A-20. This financing mechanism, commonly known as certificates of participation, was not authorized when cities were given the authority to operate a cable system as a public enterprise. Under this financing method, a city enters into an installment contract secured by a security interest in the system that is constructed. Unlike the issuance of general obligation bonds, installment purchase financing is not subject to a vote of the people. A certificate of participation is a document setting out the share of the city's debt that is owed to the holder of the certificate. In practice, the holder receives interest and principal payments in a manner similar to interest and principal payments on a bond issued by the borrowing unit. The Local Government Commission must approve a local unit's use of certificates of participation and the unit must give notice and hold a public hearing before it can enter into certificates of participation.

All of the cities that currently operate a cable and internet system had an operating loss in their system in fiscal year 2007-08 and 2008-09 ranging from $128,000 to $2.6 million. Two of the cities, Morganton and Wilson, have transferred funds from their electric utility public enterprise operations to provide funds to their cable and internet systems. Salisbury has issued $35.9 million in certificates of participation to finance its system and is in the process of constructing the system.

BILL ANALYSIS: Section 1 of the bill excludes an external communication system from the activities a city can finance with nonvoted certificates of participation. The authority to finance these systems through the issuance of general obligation bonds is not affected. By limiting the exclusion to an external system, the bill preserves the authority of cities to provide a system for its internal governmental purposes, such as police, fire, and rescue. The exclusion does not affect debt that has already been issued.

The purpose of the restriction is to ensure that a city's financing for a communication system is supported by the people. This support would be manifest in a vote on a general obligation bonds.

Section 2 of the bill authorizes the Revenue Laws Study Committee to continue its study of local government owned and operated communication services and to report its findings on this topic to the 2011 General Assembly.

EFFECTIVE DATE: This act would become effective when it becomes law.

2009-TD-33-SMTD-153 *v1*

LEGISLATIVE PROPOSAL #9

REVENUE LAWS TECHNICAL, ADMINISTRATIVE, & CLARIFYING CHANGES

LEGISLATIVE PROPOSAL #9

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2010 REGULAR SESSION OF THE 2009 GENERAL ASSEMBLY

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE TAX AND RELATED LAWS.

SHORT TITLE: Revenue Laws Technical and Administrative Changes.

PRIMARY SPONSORS: Senator Clodfelter
Representative Wainwright

BRIEF OVERVIEW: This legislative proposal makes several technical, clarifying, and administrative changes to the revenue laws and related statutes, including changes to the motor fuel tax and property tax laws. Many of the changes were recommendations of the Department of Revenue.

FISCAL IMPACT:

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.

A copy of the proposed legislation and a bill analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

U **D**

BILL DRAFT 2009-TDxz-35 [v.1] (02/08)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/12/2010 12:41:17 PM

Short Title:	Rev. Laws Technical & Admin. Changes.	(Public)
Sponsors:	.	
Referred to:		

A BILL TO BE ENTITLED
AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE TAX AND RELATED LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. The introductory language to G.S. 105-113.40A reads as rewritten:

"The Secretary must credit the net proceeds of the tax collected under this ~~Article~~ Part as follows:"

SECTION 2. G.S. 105-129.16D(b1) reads as rewritten:

"(b1) Alternative Production Credit. – In lieu of the credit allowed under subsection (b) of this section, a taxpayer that constructs and places in service in this State three or more commercial facilities for processing renewable fuel and that invests a total amount of at least four hundred million dollars ($400,000,000) in the facilities is allowed a credit equal to thirty-five percent (35%) of the cost to the taxpayer of constructing and equipping the facilities. In order to claim the credit, the taxpayer must obtain a written determination from the Secretary of Commerce that the taxpayer is expected to invest within a five-year period a total amount of at least four hundred million dollars ($400,000,000) in three or more facilities. The credit must be taken in seven equal annual installments beginning with the taxable year in which the first facility is placed in service. If, in one of the years in which the installment of credit accrues, a facility with respect to which the credit was claimed is disposed of or taken out of service and the investment requirements of this subsection are no longer satisfied, the credit expires and the taxpayer may take any remaining installment of the credit only to the extent allowed under subsection (b) of this section. The taxpayer may, however, take the portion of an installment under this subsection that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17. Notwithstanding the provisions of G.S. 105-129.17, a taxpayer may carry forward unused portions of the credit allowed under this subsection for the succeeding 10 years.

If a taxpayer that claimed a credit under this subsection fails to meet the requirements of this subsection but meets the requirements of subsection (b) of this section, the taxpayer forfeits the difference between the alternative credit claimed under this subsection and the credit allowed under subsection (b) of this section. A taxpayer that forfeits part of the alternative credit under this subsection is liable for the additional taxes avoided plus interest at the rate established under ~~G.S. 105-241.1(i),~~ G.S. 105-241.21, computed from the date the additional taxes would have been due if the credit had not been allowed. The additional taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer that fails to pay the additional taxes and interest by the due date is subject to penalties provided in G.S. 105-236."

SECTION 3. G.S. 105-159.1(a) reads as rewritten:

"(a) Every individual whose income tax liability for the taxable year is three dollars ($3.00) or more may designate on his or her income tax return that three dollars ($3.00) of the tax shall be credited to the North Carolina Political Parties Financing Fund for the use of the political party designated by the taxpayer. In the case of a married couple filing a joint return whose income tax liability for the taxable year is six dollars ($6.00) or more, each spouse may designate on the income tax return that three dollars ($3.00) of the tax shall be credited to the North Carolina Political Parties Financing Fund for the use of the political party designated by the taxpayer. Amounts credited to the Fund shall be allocated among the political parties according to the designation of the taxpayer. Where any taxpayer elects to designate but does not specify a particular political party, those funds shall be distributed among the political parties on a pro rata basis according to their respective party voter registrations as determined by the most recent certification of the State Board of Elections. As used in this section, the term "political party" has the same meaning as defined in G.S. 163-96.~~means one of the following that has at least one percent (1%) of the total number of registered voters in the State~~:

~~(1) A political party that at the last preceding general State election received at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors.~~

~~(2) A group of voters who by July 1 of the preceding calendar year, by virtue of a petition as a new political party, had duly qualified as a new political party within the meaning of Chapter 163 of the General Statutes.~~"

SECTION 4.(a) G.S. 105-164.14(c) is amended by adding a new subdivision to read:

"(23) A public library created pursuant to an act of the General Assembly."

SECTION 4.(b) This section is effective July 1, 2008 and applies to purchases made on or after that date.

SECTION 5. G.S. 105-187.3 reads as rewritten:

"…

(b) Retail Value. – The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a retailer is the sales price of the motor vehicle, including all accessories attached to the vehicle when it is delivered to the purchaser, less the amount of any allowance given by the retailer for a motor vehicle taken in trade as a full or partial payment for the purchased motor vehicle. ~~The~~

The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a seller who is not a retailer is the market value of the vehicle, less the amount of any allowance given by the seller for a motor vehicle taken in trade as a full or partial payment for the purchased motor vehicle. A transaction in which two parties exchange motor vehicles is considered a sale regardless of whether either party gives additional consideration as part of the transaction. ~~The~~

The retail value of a motor vehicle for which a certificate of title is issued because of a reason other than the sale of the motor vehicle is the market value of the vehicle. The market value of a vehicle is presumed to be the value of the vehicle set in a schedule of values adopted by the Commissioner.

~~(b1) Retail Value of Transferred Department of Defense Vehicles. –~~ The retail value of a vehicle for which a certificate of title is issued because of a transfer by a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad is the sales price paid by the State agency, unit of local government, volunteer fire department, or volunteer rescue squad.

…"

SECTION 6. G.S. 105-187.6(a) is amended by adding a new subdivision to read:

"(a) Full Exemptions. – The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor vehicle:

…

"<u>(11) To a revocable trust from an owner who is the sole beneficiary of the trust.</u>"

SECTION 7.(a) G.S. 105-241.9(c) reads as rewritten:

"(c) Notice. – The Secretary must give a taxpayer written notice of a proposed assessment. The notice of a proposed assessment must contain the following information:

(1) The basis for the proposed assessment. The statement of the basis for the proposed assessment does not limit the Department from changing the basis.

(2) The amount of tax, interest, and penalties included in the proposed assessment. The amount for each of these must be stated separately.

<u>(2a) The date a failure to pay penalty will apply to the proposed assessment if the proposed assessment is not paid by that date and the amount of the penalty. If the proposed assessment is not paid by the specified date, the failure to pay penalty is considered to be assessed and applies to the proposed assessment without further notice.</u>

(3) The circumstances under which the proposed assessment will become final and collectible."

SECTION 7.(b) G.S. 105-241.11 is amended by adding a new subsection to read:

"<u>(c) FTP Penalty. – A request for a Departmental review of a proposed assessment is considered a request for a Departmental review of a failure to pay penalty that is based on the assessment. A taxpayer who does not request a Departmental review of a proposed assessment may not request a Departmental review of a failure to pay penalty that is based on the assessment.</u>"

SECTION 8. G.S. 105-241.16 reads as rewritten:

" **§ 105-241.16. Judicial review of decision after contested case hearing.**

A taxpayer aggrieved by the final decision in a contested case commenced at the Office of Administrative Hearings may seek judicial review of the decision in accordance with Article 4 of Chapter 150B of the General Statutes. Notwithstanding G.S. 150B-45, a petition for judicial review must be filed in the Superior Court of Wake County and in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4(b) through (f). ~~A taxpayer who files~~ <u>Before filing</u> a petition for judicial ~~review~~ <u>review, a taxpayer</u> must pay the amount of tax, penalties, and interest the final decision states is due. A taxpayer may appeal a decision of the Business Court to the appellate division in accordance with G.S. 150B-52."

SECTION 9.(a) G.S. 105-263 reads as rewritten:

§ 105-263. ~~Extensions of time for filing a report or return.~~<u>Timely filing of mailed documents and requests for extensions.</u>

(a) Mailed Document. – Section 7502 of the Code governs when a return, report, payment, or any other document that is mailed to the Department is timely filed.

(b) Extension. – The Secretary may extend the time in which a person must file a report or return with the Secretary. To obtain an extension of time for filing a report or return, a person must comply with any application requirement set by the Secretary. An extension of time for filing a franchise tax return or an income tax return does not extend the time for paying the tax due or the time when a penalty attaches for failure to pay the tax. An extension of time for filing a report or any return other than a franchise tax return or an income tax return extends the time for paying the tax due and the time when a penalty attaches for failure to pay the tax. When an extension of time for filing a report or return extends the time for paying the tax expected to be due with the report or return, interest, at the rate established pursuant to G.S. 105-241.21, accrues on the tax due from the original due date of the report or return to the date the tax is paid."

SECTION 9.(b) G.S. 105-241.11(b) reads as rewritten:

"(b) Filing. – A request for a Departmental review of a proposed denial of a refund or a proposed assessment is considered filed on the following dates:

(1) For a request that is delivered in person, the date it is delivered.

(2) For a request that is mailed, the date determined in accordance with G.S. 105-263.

(3) For a request ~~not delivered in person,~~ delivered by another method, the date the Department receives it."

SECTION 10. G.S. 105-259(b) is amended by adding a new subdivision to read:

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

…

(40) To furnish a nonparticipating manufacturer, as defined in G.S. 66-292, the amount of the manufacturer's tobacco products that a taxpayer sells in this State and that the Secretary reports to the Attorney General under G.S. 105-113.4C."

SECTION 11. G.S. 105-466(c) reads as rewritten:

"(c) Collection of the tax, and liability therefor, must begin and continue only on and after the first day of ~~the month of either January or July,~~ a calendar quarter, as set by the board of county commissioners in the resolution levying the tax. In no event may the tax be imposed, or the tax rate changed, earlier than the first day of the second succeeding calendar month after the date of the adoption of the resolution. The county must give the Secretary at least ~~90~~60 days advance notice of a new tax levy or tax rate change. The applicability of a new tax or a tax rate change to purchases from printed catalogs becomes effective on the first day of a calendar quarter after a minimum of 120 days from the date the Secretary notifies the seller that receives orders by means of a catalog or similar publication of the new tax or tax rate change."

PROPERTY TAX CHANGES

SECTION 12. G.S. 105-275(29a) reads as rewritten:

"**§ 105-275. Property classified and excluded from the tax base.**

The following classes of property are designated special classes under Article V, Sec. 2(2), of the North Carolina Constitution and are excluded from tax:

…

(29a) Land that is within an historic district and is held by a nonprofit corporation organized for historic preservation purposes for use as a future site for an historic structure that is to be moved to the site from another location. Property may be classified under this subdivision for no more than five years. The taxes that would otherwise be due on land classified under this subdivision shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when an historic structure is not moved to the property within five years from the first day of the fiscal year the property was classified under this subdivision. <u>In addition to the provisions in G.S. 105-277.1F, all liens arising under this subdivision are extinguished upon the location of an historic structure on the site within the time period allowed under this subdivision.</u>"

SECTION 13. G.S. 105-277.1C(b)(1) reads as rewritten:

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

(1) Disabled veteran. – A veteran of any branch of the Armed Forces of the United States whose character of service at separation was honorable or under honorable conditions and who satisfies one of the following requirements:

a. As of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, the veteran had received benefits under 38 U.S.C. § 2101.

b. The veteran has received a certification by the United States Department of Veterans Affairs or another federal agency indicating that, as of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, he or she has a service-connected, permanent, and total disability.

<u>c.</u> ~~If the veteran is deceased, the certificate must indicate that he or she had the disability prior to the date of death or that the death was~~ <u>The veteran is deceased and the United States Department of Veterans Affairs or another federal agency has certified that, as of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, the veteran's death was</u> the result of a service-connected condition.

(2) Repealed by Session Laws 2009-445, s. 22(c), effective for taxes imposed for taxable years beginning on or after July 1, 2009.

(3) Permanent residence. – Defined in G.S. 105-277.1.

(4) Property tax relief. – Defined in G.S. 105-277.1.

(4a) Qualifying owner. – An owner, as defined in G.S. 105-277.1, who is a North Carolina resident and one of the following:

a. A disabled veteran.

b. The surviving spouse of a disabled veteran who has not remarried.

(5), (6) Repealed by Session Laws 2009-445, s. 22(c), effective for taxes imposed for taxable years beginning on or after July 1, 2009.

(7) Service-connected. – Defined in 38 U.S.C. § 101"

SECTION 14. G.S. 105-277.8 reads as rewritten:

"**§ 105-277.8. Taxation of property of nonprofit homeowners' association.**

(a) The value of real and personal property owned by a nonprofit homeowners' association shall be included in the appraisals of property owned by members of the association and shall not be assessed against the association ~~if:~~if the following requirements are met:

(1) All property owned by the association is held for the use, benefit, and enjoyment of all members of the association ~~equally;~~equally.

(2) Each member of the association has an irrevocable right to use and enjoy, on an equal basis, all property owned by the association, subject to any restrictions imposed by the instruments conveying the right or the rules, regulations, or bylaws of the ~~association; and~~association.

(3) Each irrevocable right to use and enjoy all property owned by the association is appurtenant to taxable real property owned by a member of the association.

(4) All property owned by the association and all taxable property owned by the members of the association to which it is appurtenant are subject to the same taxing jurisdictions.

The assessor may allocate the value of the association's property among the property of the association's members on any fair and reasonable basis.

(b) As used in this section, "nonprofit homeowners' association" means a homeowners' association as defined in § 528(c) of the Internal Revenue Code."

SECTION 15. G.S. 105-278(b) reads as rewritten:

"(b) The difference between the taxes due on the basis of fifty percent (50%) of the true value of the property and the taxes that would have been payable in the absence of the classification provided for in subsection (a) shall be a lien on the property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses the benefit of this classification as a result of a disqualifying event. A disqualifying event occurs when there is a change in an ordinance designating a historic property or a change in the property, other than by fire or other natural disaster, that causes the property's historical significance to be lost or substantially impaired. In addition to the provisions in G.S. 105-277.1F, no deferred taxes are due and all liens arising under this subsection are extinguished when the property's historical significance is lost or substantially impaired due to fire or other natural disaster."

SECTION 16. G.S. 105-278.6(e) reads as rewritten:

"(e) Real property held by an organization described in subdivision (a)(8) for a charitable purpose under this section as a future site for housing for individuals or families with low or moderate incomes may be classified under this section for no more than five years. The taxes that would otherwise be due on real property exempt under this subsection shall be a lien on the property as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the organization fails to construct low- or moderate-income housing on the site within five years from the first day of the fiscal year the property was classified under this subsection. In addition to the provisions in G.S. 105-277.1F, all liens arising under this subdivision are extinguished when the property is used for low- or moderate-income housing within the time period allowed under this subsection."

SECTION 17. G.S. 105-333(14) reads as rewritten:

"(14) Public service company. – A railroad company, a pipeline company, a gas company, an electric power company, an electric membership corporation, a telephone company, a telegraph company, a bus line company, an airline company, or a motor freight carrier company. The term also includes any company performing a public service that is regulated by the United States Department of Energy, the United States Department of Transportation, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities Commission, except that the term does not include a water company, ~~a radio common carrier company as defined in G.S. 62-119(3),~~ a cable television company, or a radio or television broadcasting company."

SECTION 18. G.S. 105-333 is amended by adding a new definition to read:

"(21) Terminal. – A motor freight carrier facility that includes buildings for the handling and temporary storage of freight pending transfer between locations. The term also includes a facility that handles truckloads only and typically consists of a wide, open space where rolling stock is parked, and a building for offices and maintenance of rolling stock."

SECTION 19. Section 4 of S.L. 2009-308 reads as rewritten:

"**SECTION 4**. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2010. This act is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2013. ~~Residences receiving the property tax benefit provided by this act are not affected by the repeal of this act until the occurrence of a disqualifying event.~~Notwithstanding the repeal of this act, residences that are receiving the property tax benefit provided by this act in the year immediately prior to the repeal are not affected by the repeal of this act and remain eligible for approval of this benefit for subsequent taxable years until the occurrence of a disqualifying event."

SECTION 20.(a) Section 22.(d) of S.L. 2007-527, reads as rewritten:

"**SECTION 22.(d)** Subsection (c) of this section becomes effective ~~January 1, 2010.~~July 1, 2010. The remainder of this section is effective when it becomes law."

SECTION 20.(b) Section 22(d) of S.L. 2007-527,. as amended by Section 66 of S.L. 2008-134 reads as rewritten:

"**SECTION 22.(d)** Subsection (c) of this section becomes effective ~~January 1, 2011,~~July 1, 2013, or when the Division of Motor Vehicles of the Department of Transportation and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. The remainder of this section is effective when it becomes law."

SECTION 20.(c) Section 24.(c) of S.L. 2009-445 reads as rewritten:

"**SECTION 24.(c)** G.S. 105-330.9 and G.S. 105-330.11, as amended in subsection (a) of this section, are effective when this act becomes law. Subsection (b) of this section and the remainder of subsection (a) of this section become effective ~~July 1, 2011,~~July 1, 2013, and apply to combined tax and registration notices issued on or after that date, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system or registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. The remainder of this section is effective when it becomes law."

SECTION 20.(d) Section 8 of S.L. 2007-471. as amended by Section 25.(a) of S.L. 2009-445 reads as rewritten:

"**SECTION 8.** Unless otherwise stated, this act becomes effective ~~July 1, 2011,~~July 1, 2013, and applies to combined tax and registration notices issued on or after that date, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first."

SECTION 20.(e) Section 79 of S.L. 2008-134, as amended by Section 25.(b) of S.L. 2009-445 reads as rewritten:

"**SECTION 79.** Sections 16 through 60 of this act become effective January 1, 2009. Except as otherwise provided, the remainder of this act is effective when it becomes law. Section 63 of this act is repealed ~~July 1, 201.~~July 1, 2013."

MOTOR FUEL TAX CHANGES

SECTION 21. G.S. 105-241(b)(2a) reads as rewritten:

"(b) Electronic Funds Transfer. – Payment by electronic funds transfer is required as provided in this subsection.

…

(2a) Motor fuel taxes. – A taxpayer that is required to file an electronic return under ~~Article 36C or Article 36D~~ Subchapter V of this Chapter or Article 3 of Chapter 119 of the General Statutes must pay the tax by electronic funds transfer.

SECTION 22.(a) G.S. 105-449.39 reads as rewritten:

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

Every motor carrier subject to the tax levied by this Article is entitled to a credit on its quarterly ~~report~~ return for tax paid by the carrier on fuel purchased in the State. The amount of the credit is determined using the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter covered by the ~~report.~~ return. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

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

SECTION 22.(b) G.S. 105-449.40(a) reads as rewritten:

"(a) Authority. – The Secretary may require a motor carrier to furnish a bond when any of the following occurs:

(1) The motor carrier fails to file a ~~report~~ return within the time required by this Article.

(2) The motor carrier fails to pay a tax when due under this Article.

(3) After auditing the motor carrier's records, the Secretary determines that a bond is needed to protect the State from loss in collecting the tax due under this Article."

SECTION 22.(c) G.S. 105-449.42 reads as rewritten:

"**§ 105-449.42. Payment of tax.**

The tax levied by this Article is due when a motor carrier files a quarterly ~~report~~ return under G.S. 105-449.45. The amount of tax due is calculated on the amount of motor fuel or alternative fuel used by the motor carrier in its operations within this State during the quarter covered by the ~~report.~~return."

SECTION 22.(d) G.S. 105-449.42A reads as rewritten:

"**§ 105-449.42A. Leased motor vehicles.**

(a) Lessor in Leasing Business. – A lessor who is regularly engaged in the business of leasing or renting motor vehicles without drivers for compensation is the motor carrier for a leased or rented motor vehicle unless the lessee of the leased or rented motor vehicle gives the Secretary written notice, by filing a ~~report~~ return or otherwise, that the lessee is the motor carrier. In that circumstance, the lessee is the motor carrier for the leased or rented motor vehicle.

Before a lessee gives the Secretary written notice under this subsection that the lessee is the motor carrier, the lessee and lessor must make a written agreement for the lessee to be the motor carrier. Upon request of the Secretary, the lessee must give the Secretary a copy of the agreement.

(b) Independent Contractor. – The lessee of a motor vehicle that is leased from an independent contractor is the motor carrier for the leased motor vehicle unless ~~either of the following applies:~~one of the circumstances listed in this subdivision applies. If either of these circumstances applies, the lessor is the motor carrier for the leased motor vehicle.

(1) The motor vehicle is leased for fewer than 30 days.

(2) The motor vehicle is leased for at least 30 days and the lessor gives the Secretary written notice, by filing a ~~report~~ return or otherwise, that the lessor is the motor carrier. Before a lessor gives the Secretary written notice that the lessor is the motor carrier, the lessor and lessee must make a written agreement for the lessor to be the motor carrier. Upon request of the Secretary, the lessor must give the Secretary a copy of the agreement.

~~If either of these circumstances applies, the lessor is the motor carrier for the leased motor vehicle.~~

~~Before a lessor gives the Secretary written notice under subdivision (2) that the lessor is the motor carrier, the lessor and lessee must make a written agreement for the lessor to be the motor carrier. Upon request of the Secretary, the lessor must give the Secretary a copy of the agreement.~~

(c) Liability. – An independent contractor who leases a motor vehicle to another for fewer than 30 days is liable for compliance with this Article and the person to whom the motor vehicle is leased is not liable. Otherwise, both the lessor and lessee of a motor vehicle are jointly and severally liable for compliance with this Article."

SECTION 22.(e) G.S. 105-449.44(b) reads as rewritten:

"(b) Presumption. – The Secretary must check ~~reports~~ returns filed under this Article against the weigh station records and other records of the Division of Motor Vehicles of the Department of Transportation and the State Highway Patrol of the Department of Crime Control and Public Safety concerning motor carriers to determine if motor carriers that are operating in this State are filing the ~~reports~~ returns required by this Article. If the records indicate that a motor carrier operated in this State in a quarter and either did not file a ~~report~~ return for that quarter or understated its mileage in this State on a ~~report~~ return filed for that quarter by at least twenty-five percent (25%), the Secretary may assess the motor carrier for an amount based on the motor carrier's presumed operations. The motor carrier is presumed to have mileage in this State equal to 10 trips of 450 miles each for each of the motor carrier's qualified motor vehicles and to have fuel usage of four miles per gallon."

SECTION 22.(f) G.S. 105-449.45 reads as rewritten:

"**§ 105-449.45. ~~Reports~~ Returns of carriers.**

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

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

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

(2) The motor carrier is an intrastate motor carrier, as indicated on the motor carrier's application for registration with the Secretary.

(c) ~~Other Reports.~~ Informational Returns. – A motor carrier must file with the Secretary ~~other reports~~ any informational returns concerning its operations that the Secretary requires.

(d) Penalties. – A motor carrier that fails to file a ~~report~~ return under this section by the required date is subject to a penalty of fifty dollars ($50.00)."

SECTION 23. G.S. 105-449.37(a)(1) reads as rewritten:

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

(1) International Fuel Tax Agreement. – The Articles of Agreement adopted by the International Fuel Tax Association, Inc., as amended as of ~~June 1, 2008.~~June 1, 2010.

…".

SECTION 24. G.S. 105-449.47A reads as rewritten:

"**§ 105-449.47A. Reasons why the Secretary can deny an application for a registration and decals.**

The Secretary may refuse to register and issue a decal to an applicant that does not meet the requirements set out in G.S. 105-449.69(b) or that has done any of the following:

(1) Had a registration issued under Chapter 105 or Chapter 119 of the General Statutes cancelled by the Secretary for cause.

(2) Had a registration issued by another jurisdiction, pursuant to the International Fuel Tax Agreement, cancelled for cause.

(3) Been convicted of fraud or misrepresentation.

(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if registered and issued a decal.

(5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.

(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 25.(a) G.S. 105-449.105A reads as rewritten:

"**§ 105-449.105A. Monthly refunds for kerosene.**

(a) ~~Refund. – A distributor who sells kerosene to any of the following may obtain a monthly refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:~~

~~(1)~~ ~~The end-user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end-user that contains fuel used only for one of the following purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable:~~

~~a.~~ ~~Heating.~~

~~b.~~ ~~Drying crops.~~

~~c. A manufacturing process.~~

~~(2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that meets both of the following conditions:~~

~~a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.~~

~~b. It either has a dispensing device that is not suitable for use in fueling a highway vehicle or is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene.~~

~~(3) An airport, if the distributor dispenses the kerosene into a storage facility that contains fuel used only for fueling airplanes and that meets at least one of the following conditions:~~

~~a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.~~

~~b. It has a dispensing device that is not suitable for use in fueling a highway vehicle.~~

Refund for Undyed Kerosene Sold to an End-User for Non-Highway Use. – A distributor who sells kerosene to an end-user for one of the purposes listed in this subsection may obtain a monthly refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93, if the distributor dispenses the kerosene into a storage facility of the end-user that contains fuel used only for one of those purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable.

(1) Heating.

(2) Drying crops.

(3) A manufacturing process.

(b) Liability. – If the Secretary determines that the Department overpaid a distributor by refunding more tax to the distributor than is due under this section, the distributor is liable for the amount of the overpayment. ~~This liability applies regardless of whether the actions of a retailer of kerosene contributed to the overpayment.~~"

SECTION 25.(b) This section becomes effective January 1, 2011, and applies to sales of kerosene made by a distributor on or after that date.

SECTION 26. G.S. 105-449.105B reads as rewritten:

"**§ 105-449.105B. Monthly hold harmless refunds for licensed distributors and some licensed importers.**

~~quarter~~

If a licensed distributor or licensed importer purchases motor fuel from a licensed supplier during a month and the discount the distributor or importer receives under G.S. 105-449.93(b) on the motor fuel is less than the amount the distributor or importer would have received during that month if the distributor or importer had been allowed a discount on taxable gasoline purchased by the distributor or importer from a supplier under the following schedule, the distributor or importer is allowed a monthly refund of the difference:

Amount of Gasoline Purchased Each Month	Percentage Discount
First 150,000 gallons	2%
Next 100,000 gallons	1 1/2%

Amount over 250,000 gallons 1%.

In determining the amount of discounts a distributor or importer received under G.S. 105-449.93(b) for motor fuel purchased in a month, a distributor or importer is considered to have received the amount of any discounts the distributor or importer could have received under that subsection but did not receive because the distributor or importer failed to pay the tax due to the supplier by the date the supplier had to pay the tax to the State."

SECTION 27.(a) G.S. 105-449.106(b) reads as rewritten:

"(b) Taxi. – A person who purchases and uses motor fuel in a ~~taxicab, as defined in G.S. 20-87(1),~~ <u>taxicab</u> while the taxicab is engaged in transporting passengers for hire, or in a bus operated as part of a city transit system that is exempt from regulation by the North Carolina Utilities Commission under G.S. 62-260(a)(8), may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. <u>For purposes of this subsection, the term "taxicab" means a motor vehicle that seats no more than nine passengers, transports passengers for hire, operates on call or demand, and accepts and solicits passengers indiscriminately.</u> An application for a refund must be made in accordance with this Part."

SECTION 27.(b) G.S. 105-449.106(c) reads as rewritten:

(c) Special Mobile Equipment. – A person who purchases and uses motor fuel ~~to operate special mobile equipment off-highway~~ <u>for the off-highway operation of special mobile equipment registered under Chapter 20 of the General Statutes</u> may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter, as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

SECTION 27.(c) Subsection (b) of this section becomes effective October 1, 2010, and applies to motor fuel purchased on or after that date. The remainder of this section is effective when it becomes law.

SECTION 28. G.S. 105-449.108(b) reads as rewritten:

"(b) Requirements. – An application for ~~an annual~~ <u>a</u> refund <u>allowed under this Part must be filed with the Secretary and be in the form required by the Secretary. The application</u> ~~must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year. An application for a refund allowed under this Part~~ must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.<u> An application for an annual refund must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year.</u>"

…"

OTHER CHANGES

SECTION 29.(a) G.S. 55-16-22(c) reads as rewritten:

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

SECTION 29.(b) G.S. 57C-2-23 reads as rewritten:

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

(a) Requirement and Content. -- Each domestic limited liability company other than a professional limited liability company governed by G.S. 57C-2-01(c) and each foreign limited liability company authorized to transact business in this ~~State, shall deliver to the Secretary of State for filing an annual report, in~~ State must file an annual report with the Secretary of State on a form prescribed by the Secretary ~~of State, that sets forth all of the following:~~and in the manner required by the Secretary. The annual report must specify the year to which the report applies and must set out the information listed in this subsection. The information must be current as of the date the company completes the report. If the information in the company's most recent annual report has not changed, the company may certify on its annual report that the information has not changed in lieu of restating the information.

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

(1) The name of the limited liability or foreign limited liability company and the state or country under whose law it is formed.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or both.

(3) The address and telephone number of its principal office.

(4) The names and business addresses of its managers or, if the limited liability company has never had members, its organizers.

(5) A brief description of the nature of its business.

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

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

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

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

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

SECTION 29.(c) This section is effective when it becomes law. A limited liability company whose articles of organization were filed on or after January 1, 2010, but before April

15, 2010, is not required to file an annual report until April 15, 2011. A limited liability company that was formed during this period and that has filed an annual report that is not required is considered to have filed the annual report due April 15, 2011. A limited liability company that was formed before January 1, 2009, and has filed an annual report in each year after the calendar year in which its article of organization were filed is considered to have met its annual report filing requirements.

SECTION 30.(a) G.S. 143B-437.012(j) reads as rewritten:

"(j) Agreement. – Unless the Secretary of Commerce determines that the project is no longer eligible or appropriate for a grant under this section, the Department shall enter into an agreement to provide a grant or grants for a project recommended by the Committee. Each grant agreement is binding and constitutes a continuing contractual obligation of the State and the business. The grant agreement shall include the performance criteria, remedies, and other safeguards recommended by the Committee or required by the Department.

Each grant agreement ~~for a business that is a major employer under subdivision (1) of subsection (d) of this section~~ shall contain a provision prohibiting a business from receiving a payment or other benefit under the agreement at any time when the business has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or otherwise resolved. Each grant agreement for a business that is a major employer under subdivision (a) of subsection (d) of this section shall contain a provision requiring the business to maintain the employment level at the project that is the subject of the agreement that is the lesser of the level it had at the time it applied for a grant under this section or that it had at the time that the investment required under subsection (d) of this section began. For the purposes of this subsection, the employment level includes full-time employees and equivalent full-time contract employees. The agreement shall further specify that the amount of a grant shall be reduced in proportion to the extent the business fails to maintain employment at this level and that the business shall not be eligible for a grant in any year in which its employment level is less than eighty percent (80%) of that required.

Each grant agreement for a business that is a large manufacturing employer under subdivision (2) of subsection (d) of this section shall contain a provision requiring the business to maintain the employment level required under that subdivision at the project that is the subject of the grant. The agreement shall further specify that the business is not eligible for a grant in any year in which the business fails to maintain the employment level.

A grant agreement may obligate the State to make a series of grant payments over a period of up to 10 years. Nothing in this section constitutes or authorizes a guarantee or assumption by the State of any debt of any business or authorizes the taxing power or the full faith and credit of the State to be pledged.

The Department shall cooperate with the Attorney General's office in preparing the documentation for the grant agreement. The Attorney General shall review the terms of all proposed agreements to be entered into under this section. To be effective against the State, an agreement entered into under this section shall be signed personally by the Attorney General."

SECTION 30.(b) This section becomes effective July 1, 2010.

SECTION 31.(a) G.S. 143B-437.012(l)(4) reads as rewritten:

"(4) Ninety-five percent (95%) of the sales and use taxes paid on ~~electricity,~~electricity and the excise tax paid on piped natural ~~gas, and the privilege tax paid on other fuel for electricity, piped natural gas, and other fuel consumed at the project that is the subject of the agreement.~~gas."

SECTION 31.(b) This section is effective July 1, 2010.

SECTION 32. G.S. 159-107(e) reads as rewritten:

"(e) ~~Increment Agreements. –~~ Effect of Annexation on District Established by a County. – If a city annexes land in a development financing district established by a county pursuant to G.S. 158-7.3, the proceeds of all taxes levied by the city on property within the district shall be paid to the city unless the city enters into an agreement with the county pursuant to this subsection, and the annexed land in the county's district that subsequently becomes a part of the city does not count against the city's five-percent (5%) limit under G.S. 158-7.3 or G.S. 160A-515.1 unless the city and the county enter into an agreement pursuant to this section. The city and the county may enter into an increment agreement under which the city agrees that city taxes on part or all of the incremental valuation in the district shall be paid into the revenue increment fund for the district. An increment agreement may be entered into when the district is established or at any time after the district is established. The increment agreement may extend for the duration of the district or for a shorter time agreed to by the parties."

SECTION 33. G.S. 160A-239.4(b) reads as rewritten:

(b) Assessments Pledged. – An assessment imposed under this Article may be pledged to secure revenue bonds under ~~G.S. 153A-210.6~~G.S. 160A-239.6 or as additional security for a project development financing debt instrument under G.S. 159-111. If an assessment imposed under this Article is pledged to secure financing, the city council must covenant to enforce the payment of the assessments."

SECTION 34. G.S. 160A-613(b) is repealed.

SECTION 35. Section 27A.3(c) of S.L. 2005-451 is repealed.

EFFECTIVE DATE

SECTION 36. Except as otherwise provided, this act is effective when it becomes law.

Bill Draft 2009-TDxz-35:
Rev. Laws Technical & Admin. Changes.

2009-2010 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	May 12, 2010
Introduced by:		**Prepared by:**	Cindy Avrette
Analysis of:	2009-TDxz-35		Committee Counsel

SUMMARY: Bill draft 2009-TDxz-35 makes technical, clarifying, and administrative changes to various tax statutes and related laws.

BILL ANALYSIS: Except as otherwise specified, this proposal would become effective when it becomes law.

Section	Explanation
VARIOUS TAX LAW CHANGES	
1	Corrects a reference.
2	Corrects a statutory cite.
3	Conforms the definition of "political party" in Chapter 105 with the definition in Chapter 163. When the General Assembly enabled taxpayers to designate part of their tax refund to a political party, the definition of 'political party' in the tax statute conformed to the definition of 'political party' in Chapter 163. The General Assembly changed the definition of 'political party' in Chapter 163 in 2006, but failed to make a conforming change in Chapter 105. The two different definitions have led to confusion because the definition under Chapter 163 recognizes three political parties while the definition in the tax statutes recognizes only two political parties.
4	Allows a public library created by an act of the General Assembly a sales and use tax refund. Unlike other public libraries that are part of a city or county government, the Public Library of Charlotte and Mecklenburg County is a creature of law. The General Assembly chartered the library in 1903 as a body corporate. Other public libraries are allowed an annual sales and use tax refund as part of a unit of local government. This section adds public libraries created pursuant to an act of the General Assembly to the list of governmental entities allowed an annual refund. Prior to 2008, the Public Library applied for semi-annual sales and use tax refunds as a charitable entity under G.S. 105-164.14(b). The General Assembly clarified the charitable refund provision in 2008 as applying to 501(c)(3) organizations to limit the expansion of the provision by a Court of Appeals decision in *The Lynnwood Foundation v. N.C. Department of Revenue.* (S.L. 2008-107). The Public Library of Charlotte and Mecklenburg County is not organized as a 501(c)(3) entity. The section is effective July 1, 2008, and applies to purchases made on or after that date. The retroactive effective date refers to the date that the 2008 clarifying legislation became effective.
5	Consolidates two subsections into one because both subsections define the retail value of a motor vehicle for purposes of the highway use tax.
6	Provides that a certificate of title issued as the result of a transfer to a revocable

	trust from an owner who is the sole beneficiary of the trust is exempt from the highway use tax. This transfer is essentially a transfer to the same owner. The current law currently exempts transfers to the same owner to reflect a name change.
7	Clarifies that the federal mailbox rule governs when a document that is mailed to the Department of Revenue is timely filed. Under the federal mailbox rule, documents submitted by mail to the IRS are considered to be filed on the date shown on the postmark stamped by the USPS. Under current NC law, a notice of appeal submitted to the Property Tax Commission by mail is considered to be filed on the date shown on the postmark stamped by the USPS. However, in regards to other documents submitted to the Department, the issue is unclear. The statutes typically provide that a return or payment must be filed by a certain date or is due by a certain date. The Department has traditionally abided by the mailbox rule. As part of the Tax Appeals changes in 2007, G.S. 105-241.11 provides that requests for review of a denial of a refund or a proposed assessment are considered timely filed on the date the Department receives it. The Department believes the law is now unclear with regards to other filings. This section clarifies the law with respect to documents submitted by mail to the Department and it makes a conforming change to the Tax Appeals statute to remove any ambiguity.
8	Clarifies a disputed tax amount must be paid before seeking judicial review.
9	Consolidates two separate notices concerning taxes owed into one notice. The two notices are a notice of a proposed assessment of tax and a notice of a failure to pay penalty if the proposed assessment of tax is not paid within 45 days. Section 3(a) requires a notice of a proposed assessment of tax to inform the taxpayer that a failure to pay penalty will apply to the assessed tax if the assessment is not paid or protested within 45 days. This change streamlines the assessment process and eliminates the mailing costs for the current, separate notice of the failure to pay penalty. Section 3(b) clarifies that the protest of a proposed assessment applies to any failure to pay penalty imposed on the underlying assessment.
10	Enables nonparticipating manufacturers to have access to the information that is used to determine their escrow payments. Currently, when there is dispute about the volume of sales in this State, the nonparticipating manufacturers have no way to verify the sales.
11	Provides that a local sales tax rate may be changed on the first day of any calendar quarter so long as the county gives the Department of Revenue at least 60 days notice. The current law requires 90 days notice and provides that a tax rate change may only be made on the first day of either January or July. The General Assembly enacted the current provision in July 2000 as part of the Streamlined Sales Tax Agreement changes. The Agreement, subsequently enacted in January 2001, provided for the quarterly dates and 60 days notice. This change will conform the local statutes to the SSTA.
PROPERTY TAX CHANGES	
12	Clarifies that liens are extinguished when property is used for low or moderate income housing within allowed statutory time period.
13	Amends the definition of "disabled veteran" to include a veteran whose death was the result of a service-connected condition.
14	Amends G.S. 105-277.8 to add an additional requirement that must be met

	before property owned by a nonprofit HOA is included in the appraisal of property owned by members of the HOA instead of property owned by the HOA. This additional requirement is that all property owned by the HOA is contained within the same taxing jurisdiction as the taxable property owned by the members of the HOA to which it is appurtenant. This language was in HB 1625, which is currently in House Finance.
15	Clarifies that no deferred taxes are due and all liens are extinguished on historic properties when the historical significance of the property is lost or impaired due to fire or other natural causes.
16	Clarifies that liens are also extinguished when an historic structure is located on the sited within allowed statutory time period.
17	Removes the obsolete term "radio common carrier" from the definition of "public service company" in G.S. 105-333.
18	Adds a definition for "terminal facility" to G.S. 105-333.
19	Clarifies that the repeal of the builder's inventory property tax deferral does not affect the eligibility of certain property receiving the benefit.
20	Corrects an incorrect effective date for the combined motor vehicle system.
MOTOR FUEL TAX CHANGES	
21	Requires taxpayers who must file a return electronically to pay the tax by electronic funds transfer. Current law already requires electronic funds transfer of taxes due by corporations that must pay federal estimated tax by EFT, sales tax prepayments, utilities franchise tax payments, and taxpayers of motor fuel taxes and alternative fuel taxes. This section would expand the requirement to motor carriers and to kerosene suppliers under Article 3 of Chapter 119.
22	Changes the word "report" to "return" to more accurately reflect the type of document described.
23	Updates the reference to the International Fuel Tax Agreement.
24	Provides that a motor carrier who wants to register in North Carolina as its base state under IFTA must be incorporated in this State or authorized to transact business in this State.
25	Repeals some of the purposes for which a distributor may obtain a monthly refund for the motor fuel tax the distributor paid on kerosene used for a non-highway purpose. The end-user of the fuel may apply for an annual refund of the motor fuel tax paid on the kerosene under G.S. 105-449.197 if the end-user uses the kerosene for a non-highway purpose. In 1994, the federal government began requiring motor fuel to be dyed if it was non-tax-paid fuel. The dyed fuel indicates that the fuel is used for a nontaxable purpose under federal law and for a non-highway use in North Carolina. Dyed fuel is not subject to either the federal or State excise tax on motor fuel. Effective July 1, 1998, the federal government began requiring diesel fuel to be dyed. Kerosene is defined as diesel fuel. By requiring kerosene to be dyed, the federal government provided a way to purchase kerosene for non-highway uses, such as heating, without having to pay the motor fuel excise tax on the fuel. However, at the time, the public feared that dyed kerosene could not safely be used in kerosene heaters.

	When North Carolina conformed to the federal law in 1998, it enacted this refund provision.[1] The fear that dyed kerosene would be unsafe for heaters has not materialized and the refund provision at the distributor level is no longer necessary since retailers who wish to sell kerosene for non-highway uses may purchase and sell dyed kerosene. Specifically, this section repeals the refund provided to a distributor who sells kerosene to a retailer and dispenses the kerosene into a dispensing device that is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene. The distributor is liable for any overpayment of the refund, even if the overpayment is attributable to an act of the retailer. It also repeals the refund provided to a distributor who sells kerosene to an airport to be used only for fueling airplanes because no tax has been refunded for this purpose for at least the past four years. This section becomes effective January 1, 2011, and applies to sales of kerosene made by a distributor on or after that date.
26	Removes a miscellaneous word created by a redlining error.
27(a)	Provides a definition of taxicab that is substantially the same as the one that existed in G.S. 20-87(1), prior to repeal.
27(b)	Clarifies that the quarterly refund of motor fuel tax paid on fuel used to operate special mobile equipment is for the *non-highway* operation of the equipment and for equipment that is registered as SME under Chapter 20. This section becomes effective October 1, 2010, and applies to motor fuel purchased on or after that date.
28	Provides that applications for refunds must be filed in the form required by the Secretary. This change will allow for the electronic filing of refund applications.
OTHER RELATED LAW CHANGES	
29(a)	Conforms the due date for filing annual reports to the due date for filing corporate income tax returns. In 1997, at the recommendation of the General Statutes Commission, the General Assembly set the due date for corporate annual reports at the due date for filing tax returns.[2] The change was designed to make the filing of annual reports easier: the report could be made to one agency, the Department of Revenue, at a more familiar deadline date with the corporation's tax return. In 2007, the General Assembly changed the date a corporate tax return is due to be filed from the 15th day of the third month following the close of the corporation's fiscal year to the 15th day of the fourth month.[3] However, a conforming change was not made to the annual report filing statute. The lack of uniformity has caused confusion. This subsection makes the necessary conforming change.
29(b)	Provides that the first annual report required to be filed by a LLC is due by April 15th of the year *following* the calendar year in which the company files its articles of organization and that the annual report must specify the year to which the report applies. In March 2009, the Secretary of State's Office mailed 270,000 notices to businesses stating they were late in filing their annual reports. Failure to file an annual report is grounds for administrative dissolution for both business

[1]S.L. 1994-726 and S.L. 1998-146.
[2] S.L. 1997-475, section 6.1.
[3] S.L. 2007-491, section 14.

	corporations and LLCs. The Secretary of State found that many businesses thought their first annual reports were due the year after their formation.[4] The Secretary of State informed the businesses that the first annual report is due on April 15th, regardless of when the business is formed. Also, the practice of the Secretary of State's Office is to credit an annual report that it receives to the oldest year in which an annual report is due and owing. The Revenue Laws Study Committee voted to amend this proposal in response to the concern many CPAs had about the issue.
29(c)	Stipulates in the effective date section that the first annual report of a LLC is due April 15 following its year of organization. It provides that a LLC whose articles of organization were filed on or after January 1, 2010, but before April 15, 2010, is not required to file an annual report until April 15, 2011. It also provides that a LLC that was formed before January 1, 2009, and has filed an annual report in each year after the calendar year in which its articles of organization were filed is considered to have met its annual report filing requirements.
30	Corrects a drafting error in S.L. 2009-520. This section becomes effective July 1, 2010; the same date S.L. 2009-520 becomes effective.
31	Clarifies reference to tax imposed on manufacturing fuel.
32	Removes a duplicate subsection header.
33	Corrects an incorrect statutory reference.
34	Repeals a redundant statute. S.L. 2009-527 adjusted the local vehicle registration fee that may be imposed by a transit authority. The subsection being repealed not only conflicted with the 2009 law change but also became unnecessary in light of the 2009 law change.
35	S.L. 2009-451 repealed the repeal of a statute inadvertently reviving the provision. Clarifies the repeal of the original provision.
EFFECTIVE DATE	
36	Except as otherwise noted, this act is effective when it becomes law.

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[4] Prior to the enactment of S.L. 2007-475, annual reports were filed on the anniversary of the business' incorporation. In an attempt to make the filing of the report easier, S.L. 2007-475 provided that a business would file its report with its income tax return to the Department of Revenue.

APPENDIX A

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

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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 16 members as follows:

(1) Eight members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.

(2) Eight 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.)

§ 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. (1997-483, s. 14.1.)

§ 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.)

APPENDIX B

MEETING AGENDAS

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REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. Daniel Clodfelter Rep. Paul Luebke

Wednesday, January 6, 2010
Room 544, Legislative Office Building
9:30 a.m.

I. **Welcome and Introduction of Members**

II. **Overview of 2009 Finance Law Changes**

- **State Changes**
- **Recent Federal Changes:** ***Military Spouses Residency Relief Act***

– Martha Walston, Fiscal Research Division

III. **Report from the Department of Revenue**

- **Resolution Initiative**
- **Enhanced Collections**
- **Tax Information Management System (TIMS)**

Kenneth R. Lay, Secretary of the Department of Revenue

IV. **Online Travel Booking and Taxes**

– Trina Griffin, Research Division

V. **Issues Related to Cigarettes and Little Cigars**

– Heather Fennell, Research Division
– Sandra Johnson, Fiscal Research Division

VI. ~~**Economic Development Update**~~

- ~~**Reporting, Clawbacks, and Sunsets: A Look at Statutory Features that Aid the State in Tracking Incentives**~~

~~*– Dan Ettefagh, Legislative Drafting Division*~~

[Displaced to Future Meeting]

VII. **Adjournment**

Next Meeting Date: Wednesday, February 3, 2010
In Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. Daniel Clodfelter Rep. Paul Luebke

Wednesday, February 3, 2010
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of Minutes from January 6, 2010 Meeting**

II. **Proposed Legislation Related to Cigarettes and Little Cigars**

- **An Act to Reinstate Stamps on Cigarettes**
- **An Act to Modify the Taxation of Little Cigars**
  – Heather Fennell, Research Division
- **Comments from Interested Parties**
  – Sonny Wooten, President NC Wholesalers Association
  – Sandy Sands, Altria Client Services

III. **An Overview of Recently Enacted Property Tax Relief Programs**

– Martha Walston, Fiscal Research Division
– Rodney Bizzell, Fiscal Research Division

- **Comments from Interested Parties**
  – Rebecca Troutman, NC Assn. of County Commissioners
  – Paul Meyer, NC League of Municipalities
  – Pete Rodda, NC Tax Assessors/Collectors

IV. **Internet Ticket Resales**

– Trina Griffin, Research Division

V. **Adjournment**

Next Meeting Date: Wednesday, March 3, 2010
In Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. Daniel Clodfelter Rep. Paul Luebke

Wednesday, March 31, 2010
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of Minutes from February 3, 2010 Meeting**

II. **Economic Development Update**

- **Reporting and Sunsets: A Look at Statutory Features that Aid the State in Tracking Incentives (Proposed Legislation)**
  – Dan Ettefagh, Legislative Drafting Division
- **Status Report on Dell**
  – Canaan Huie, House Tax Counsel
- **Economic Development Inventory Highlights**
- **Overview of Expiring Tax Credits: Article 3J, Qualified Business Venture, and Mill Rehabilitation**
- **Distribution of Department of Commerce Clawback Report**
  – Rodney Bizzell, Fiscal Research Division

III. **Proposed Legislation Related to Internet Ticket Resales**
– Trina Griffin, Research Division

IV. **Overview of the Estate Tax**
– Mike Godwin and Betty Quick,
Estate Planning Section of the NC Bar Association
– Cindy Avrette, Research Division

V. **Improving the Efficiency of Tax Collection Compliance**
– Charles Helms, Director of Collection Division, Department of Revenue

Next Meeting Date: Wednesday, April 21, 2010
In Room 544, LOB, at 9:30 a.m.

VI. Proposed Legislation for Revenue Laws Technical, Clarifying, and Administrative Changes, Part I

– Cindy Avrette, Research Division

VII. Adjournment

Next Meeting Date: Wednesday, April 21, 2010
In Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. Daniel Clodfelter Rep. Paul Luebke

Wednesday, April 21, 2010
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of Minutes from March 31, 2010 Meeting**

II. **Report from the Department of Revenue**
– *Kenneth R. Lay, Secretary of the Department of Revenue*

III. **Revenue Issues Associated with Municipal-Owned Communication Services**

- **Overview** – *Heather Fennell, Research Division*
- **Financing Issues Related to Public Enterprises** – *Vance Holloman, Deputy Treasurer, State and Local Finance Division*
- **Remarks from Interested Parties**
  1. Private Communication Services Providers
     - *Marcus Trathen, NC Cable Communications Assn.*
     - *Bill Paramore, Suddenlink Communications*
     - *Herb Crenshaw, AT&T*
  2. Municipal-Owned Communication Services Providers
     - *Kelli Kukura, NC League of Municipalities*
     - *Brad Walser, Walser Technology Group, Owner*
     - *Colman Keane, Senior Strategic Planner, EPB Telecom*

IV. **Improving the Efficiency of Tax Collection Compliance (Proposed Legislation)**
– *Martha Walston, Fiscal Research Division*

V. **The Application of Admissions Tax to Amenities**
– *Trina Griffin, Research Division*

VI. **Resolve Interpretational Questions Raised by Repeal of Federal Estate Tax (Proposed Legislation)**
– *Cindy Avrette, Research Division*

VII. **Expand Exception to Present-Use Value Ownership Requirements (Proposed Legislation)**
– *Martha Walston, Fiscal Research Division*

VIII. **Revenue Laws Technical, Clarifying, and Administrative Changes (Proposed Legislation – Part II)**
– *Cindy Avrette, Research Division*

IX. **Adjournment**

Next meeting Date: Wednesday, May 5, 2010
In Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. Daniel Clodfelter Rep. Paul Luebke

Wednesday, May 5, 2010
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of Minutes from April 21, 2010 Meeting**

II. **Briefing on *Amazon v. NC Department of Revenue***
– Kenneth R. Lay, Secretary of the Department of Revenue

III. **Legislative Proposals For Consideration**

- **#1: IRC Update**
  Cindy Avrette, Research Division
  Jonathan Tart, Fiscal Research Division
- **#2: Construction of Wills and Trusts**
  Cindy Avrette, Research Division
- **#3: Economic Incentives Alignment and Changes**
  Dan Ettefagh, Legislative Drafting Division
- **#4: Reinstate Stamps on Cigarettes**
  Heather Fennell, Research Division
  Sandra Johnson, Fiscal Research Division
- **#5 Modernize Admissions Tax**
  Trina Griffin, Research Division
  Sandra Johnson, Fiscal Research Division
- **#6: Modernize Sales Tax on Accommodations**
  Trina Griffin, Research Division
  Sandra Johnson, Fiscal Research Division
- **#7: Improve Tax & Debt Collection Process**
  Martha Walston, Research Division
  Rodney Bizzell, Fiscal Research Division
- **#8: Expand Exception to PUV Ownership Requirements**
  Martha Walston, Fiscal Research
  Rodney Bizzell, Fiscal Research Division
- **#9: Revenue Laws Technical, Administrative, & Clarifying Changes**
  Cindy Avrette and Heather Fennell, Research Division

Martha Walston and Rodney Bizzell, Fiscal Research Division

IV. Video Programming Services Competition Report
– Cindy Avrette, Research Division

V. Approval of Final Report

VI. Adjournment

APPENDIX C

DISPOSITION OF COMMITTEE'S RECOMMENDATIONS TO THE 2009 REGULAR SESSION OF THE 2009 GENERAL ASSEMBLY

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DISPOSITION OF REVENUE LAWS STUDY COMMITTEE RECOMMENDATIONS TO THE 2009 REGULAR SESSION OF THE 2009 GENERAL ASSEMBLY

SHORT TITLE	SENATE SPONSORS	HOUSE SPONSORS	BILL #	FINAL STATUS*
IRC Update	**Hoyle, Brunstetter, Hartsell**	**Luebke**	HB 534 SB 577	**Enacted*** **SL 2009-451, [SB 202]** **Sections 27A.6.(a)(b)(c)(d)(e)(f)(g)(h)** **Budget Bill**
Change Corporate Income Tax	**Clodfelter**	**Brubaker**	HB 433 SB 486	**Enacted*** **SL 2009-445, Sec. 4 [SB 509], Rev Laws Tech, Clarifying & Admin Changes**
Streamlined Sales and Use Tax Update	**Brunstetter, Clodfelter, Hartsell, Hoyle**	**Gibson, Luebke, Wainwright, Weiss**	HB 976 SB 413	**Enacted*** **SL 2009-445, Sec. 11 [SB 509], Rev Laws Tech, Clarifying & Admin Changes**
Real Property Sales Information	**Hartsell, Brunstetter, Clodfelter, Hoyle**	**McGee**	HB 449 ► **SB 405**	**Enacted*** **SL 2009-454**
Modernize Sales Tax Statutes/Digital Products	**Clodfelter, Hartsell, Hoyle**	**Weiss, Gibson**	HB 558 SB 487	**Enacted*** **SL 2009-451, Sec. 27A.3.(g) [Budget Bill]** **SL 2009-451, Sec. 27A.2.(b) [Budget Bill]** **SL 2009-451, Sec. 27A.3.(e) [Budget Bill]** **SL 2009-451, Sec. 27A.3.(a) [Budget Bill]** **SL 2009-445, Sec. 19 [SB 509], Rev Laws Tech, Clarifying & Admin Changes**
Revenue Laws Technical, Administrative, & Clarifying Changes	**Hartsell, Brunstetter, Clodfelter, Hoyle**	**Wainwright**	HB 553 ► **SB 509**	**Enacted*** **SL 2009-445**

* Bills were modified prior to enactment.

APPENDIX D

RESPONSES TO THE COMMITTEE'S REQUEST FOR INPUT ON VIDEO PROGRAMMING ISSUES:

1) **Video Services Competition Act, 2010 Biennial Report, AT&T NORTH CAROLINA, April 28, 2010**
2) **Letter, Lynn B. Wellborn, Director, External Affairs, NORTH STATE COMMUNICATIONS, to Heather D. Fennell, Staff Attorney, North Carolina General Assembly, April 28, 2010**
3) **Memorandum, Dwight Allen, NC TELEPHONE COOPERATIVE COALITION, INC., to Heather Fennell, Legislative Research, undated**
4) **Report, NORTH CAROLINA CABLE TELECOMMUNICATIONS ASSOCIATION concerning the Biennial Review of the Video Services Competition Act, April 28, 2010**
5) **Report, Impact of the Video Services Competition Act (S.L. 2006-151), NORTH CAROLINA LEAGUE OF MUNICIPALITIES, to NCGA Revenue Laws Committee, April 29, 2010**
6) **Report (with attachments), Catherine Rice, President, SOUTHEAST ASSOCIATION OF TELECOMMUNICATIONS OFFICERS & ADVISORS ("SEATOA"), to Heather Fennell, Staff Attorney, Research Division, on the impact of the Video Service Competition Act, April 29, 2010**

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APPENDIX E

NORTH CAROLINA DEPARTMENT OF JUSTICE, CONSUMER PROTECTION DIVISION REPORT REGARDING CABLE COMPLAINTS

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