GENERAL ASSEMBLY OF NORTH CAROLINA
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BILL DRAFT 2013-TMxz-5 [v.11] (11/22)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title:	Income Tax Law Corrections.	(Public)
Sponsors:	(Primary Sponsor).	
Referred to:		

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-114(b)(4) reads as rewritten:

"(4) Income year. – Defined in ~~G.S. 105-130.2(4b).~~ G.S. 105-130.2(10)."

SECTION 2.(a) G.S. 105-160.2 reads as rewritten:

"**§ 105-160.2. Imposition of tax.**

The tax imposed by this Part applies to the taxable income of estates and trusts as determined under the provisions of the Code except as otherwise provided in this Part. The taxable income of an estate or trust is the same as taxable income for such an estate or trust under the provisions of the Code, adjusted as provided in G.S. 105-153.5 and G.S. 105-153.6,~~G.S. 105-134.6 and G.S. 105-134.6A,~~ except that the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6~~G.S. 105-134.6 and G.S. 105-134.6A~~ are apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. The tax is computed on the amount of the taxable income of the estate or trust that is for the benefit of a resident of this State, or for the benefit of a nonresident to the extent that the income (i) is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or (ii) is derived from a business, trade, profession, or occupation carried on in this State. For purposes of the preceding sentence, taxable income and gross income is computed subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6.~~G.S. 105-134.6 and G.S. 105-134.6A.~~ The tax on the amount computed above is at the rates levied in G.S. 105-153.7.~~G.S. 105-134.2(a)(3).~~ The fiduciary responsible for administering the estate or trust shall pay the tax computed under the provisions of this Part."

SECTION 2.(b) This section is effective for taxable years beginning on or after January 1, 2014.

SECTION 3. G.S. 105-163.1(3) is repealed.

SECTION 4.(a) G.S. 105-163.2 reads as rewritten:

"**§ 105-163.2. Employers must withhold taxes.**

(a) Withholding Required. – An employer shall deduct and withhold from the wages of each employee the State income taxes payable by the employee on the wages. For each payroll

period, the employer shall withhold from the employee's wages an amount that would approximate the employee's income tax liability under Article 4 of this Chapter if the employer withheld the same amount from the employee's wages for each similar payroll period in a calendar year. In calculating an employee's anticipated income tax liability, the employer shall allow for the additions,~~exemptions,~~ deductions, and credits to which the employee is entitled under Article 4 of this Chapter. The amount of State income taxes withheld by an employer is held in trust for the Secretary.

(b) Withholding Tables. – The manner of withholding and the amount to be withheld shall be determined in accordance with tables and rules adopted by the Secretary. The withholding allowances provided ~~exemption allowed~~ by these tables and rules shall, as nearly as possible, approximate the additions,~~exemptions,~~ deductions, and credits to which an employee would be entitled under Article 4 of this Chapter. The Secretary shall promulgate tables for computing amounts to be withheld with respect to different rates of wages for different payroll periods applicable to the various combinations of allowances ~~exemptions~~ to which an employee may be entitled and taking into account the appropriate standard deduction. The tables may provide for the same amount to be withheld within reasonable salary brackets or ranges so designed as to result in the withholding during a year of approximately the amount of an employee's indicated income tax liability for that year. The withholding of wages pursuant to and in accordance with these tables shall be deemed as a matter of law to constitute compliance with the provisions of subsection (a) of this section, notwithstanding any other provisions of this Article.

…"

SECTION 4.(b) G.S. 105-163.5 reads as rewritten:

"**§ 105-163.5. Employee withholding allowances; ~~exemptions allowable;~~ certificates.**

(a) An employee receiving wages is entitled to the withholding allowances that would result in the employer withholding approximately the employee's income tax liability under Article 4 of this Chapter. ~~exemptions for which the employee qualifies under Article 4 of this Chapter.~~

(b) Every employee shall, at the time of commencing employment, furnish his or her employer with a signed withholding allowance~~exemption~~ certificate informing the employer of the allowances~~exemptions~~ the employee claims.~~claims, which in no event shall exceed the amount of exemptions to which the employee is entitled under the Code.~~ If the employee fails to file the allowance~~exemption~~ certificate the employer, in computing amounts to be withheld from the employee's wages, shall allow the employee the allowances~~exemption~~ accorded a single person with no dependents.

(c) Withholding allowance~~exemption~~ certificates shall take effect as of the beginning of the first payroll period that ends on or after the date on which the certificate is furnished, or if payment of wages is made without regard to a payroll period, then the certificate shall take effect as of the beginning of the miscellaneous payroll period for which the first payment of wages is made on or after the date on which the certificate is furnished.

(d) If, on any day during the calendar year, the amount of withholding allowances~~exemptions~~ to which the employee is entitled is less than the amount of withholding allowances~~exemptions~~ claimed by the employee on the withholding allowance~~exemption~~ certificate then in effect with respect to the employee, the employee shall, within 10 days thereafter, furnish the employer with a new withholding allowance~~exemption~~ certificate stating the amount of withholding allowances~~exemptions~~ which the employee then claims, which shall in no event exceed the amount to which the employee is entitled on that day. If, on any day during the calendar year, the amount of withholding allowances~~exemptions~~ to which the employee is entitled is greater than the amount of withholding allowances~~exemptions~~ claimed, the employee may furnish the employer with a new withholding allowance~~exemption~~ certificate stating the amount of withholding allowances~~exemptions~~ which the employee then

claims, which shall in no event exceed the amount to which the employee is entitled on that day.

(e) Withholding allowance~~exemption~~ certificates must be in the form and contain the information required by the Secretary. ~~As far as practicable, the Secretary shall cause the form of the certificates to be substantially similar to federal exemption certificates.~~

(f) In addition to any criminal penalty provided by law, if an individual furnishes his or her employer an allowance~~exemption~~ certificate that contains information which has no reasonable basis and that results in a lesser amount of tax being withheld under this Article than would have been withheld if the individual had furnished reasonable information, the individual is subject to a penalty of fifty percent (50%) of the amount not properly withheld."

SECTION 5. G.S. 105-163.2A(c) reads as rewritten:

"(c) Amount. – In the case of a periodic payment, the pension payer must withhold the amount that would be required to be withheld under this Article if the payment were a payment of wages by an employer to an employee for the appropriate payroll period. ~~If the recipient of periodic payments fails to file an exemption certificate under G.S. 105-163.5, the pension payer must compute the amount to be withheld as if the recipient were a married individual claiming three withholding exemptions.~~

In the case of a nonperiodic distribution, the pension payer must withhold taxes equal to four percent (4%) of the nonperiodic distribution."

SECTION 6.(a) Section 21.1.(m) of S.L. 2013-360 reads as rewritten:

"**SECTION 21.1.(m)** ~~Subsection (c) of this section is effective for taxable years beginning on or after January 1, 2013. The remainder of this~~ This section becomes effective July 1, 2013."

SECTION 7.(a) G.S. 105-153.5(a)(2)(b) reads as rewritten:

"b. The amount allowed as a deduction for interest paid or accrued during the taxable year under section 163(h) of the Code with respect to any qualified residence plus the amount claimed by the taxpayer as a deduction for property taxes paid or accrued on real estate under section 164 of the Code for that taxable year. The amount allowed under this sub-subdivision may not exceed twenty thousand dollars ($20,000). For spouses filing as married filing separately or married filing jointly, the total mortgage interest and real estate taxes claimed by both spouses combined may not exceed $20,000. For spouses filing as married filing separately with a joint obligation for mortgage interest and real estate taxes, the deduction for these items is allowable to the spouse who actually paid them. If the amount of the mortgage interest and real estate taxes paid by both spouses exceeds $20,000, these deductions must be prorated based on the percentage paid by each spouse. For joint obligations paid from joint accounts, the proration is based on the income reported by each spouse for that taxable year."

SECTION 7.(b) This section is effective for taxable years beginning on or after January 1, 2014.

SECTION 8.(a) G.S. 105-130.5B reads as rewritten:

"(c) Section 179 Expense. – For purposes of this subdivision, the definition of section 179 property has the same meaning as under section 179 of the Code as of January 2, 2013. A taxpayer who places section 179 property in service during a taxable year listed in the table below must add to the taxpayer's federal taxable income eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code exceeds the dollar and investment limitation listed in the table below for the taxable year.

A taxpayer is allowed to deduct twenty percent (20%) of the add-back in each of the first five taxable years following the year the taxpayer is required to include the add-back in income.

Taxable Year of 85% Add-Back	Dollar Limitation	Investment Limitation
2010	$250,000	$800,000
2011	$250,000	$800,000
2012	$250,000	$800,000
2013	$25,000	~~$125,000~~$200,000

…

(e) Bonus Asset Basis. – In the event of an actual or deemed transfer of an asset occurring on or after January 1, 2013, wherein the tax basis of the asset carries over from the transferor to the transferee for federal income tax purposes, the transferee must add any remaining deductions allowed under subsection (a) of this section to the basis of the transferred asset and depreciate the adjusted basis over any remaining life of the asset. Notwithstanding the provisions of subsection (a) of this section, the transferor is not allowed any remaining future bonus depreciation deductions associated with the transferred asset.

(f) Prior Transactions. – For any transaction meeting the requirements of subsection (e) of this section prior to January 1, 2013, the transferor and transferee can make an election to make the basis adjustment allowed in that subsection on the transferee's 2013 tax ~~return,~~ return provided the following conditions are met:

(1) ~~to the extent that the~~ The transferor has not taken the bonus depreciation deduction on a prior ~~return and provided that the~~return.

(2) The transferor certifies in writing to the transferee that the transferor will not take any remaining deductions allowed under subsection (a) of this section for tax years beginning on or after January 1, 2013, for depreciation associated with the transferred asset."

SECTION 8.(b) G.S. 105-134.6A reads as rewritten:

"(c) Section 179 Expense. – For purposes of this subdivision, the definition of section 179 property has the same meaning as under section 179 of the Code as of January 2, 2013. A taxpayer who places section 179 property in service during a taxable year listed in the table below must add to the taxpayer's federal taxable income or adjusted gross income, as appropriate, eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code exceeds the dollar and investment limitation listed in the table below for that taxable year. For taxable years before 2012, the taxpayer must add the amount to the taxpayer's federal taxable income. For taxable year 2012 and after, the taxpayer must add the amount to the taxpayer's adjusted gross income.

A taxpayer is allowed to deduct twenty percent (20%) of the add-back in each of the first five taxable years following the year the taxpayer is required to include the add-back in income.

Taxable Year of 85% Add-Back	Dollar Limitation	Investment Limitation
2010	$250,000	$800,000
2011	$250,000	$800,000
2012	$250,000	$800,000
2013	$25,000	~~$125,000~~$200,000"

…

(e) Bonus Asset Basis. – In the event of an actual or deemed transfer of an asset occurring on or after January 1, 2013, wherein the tax basis of the asset carries over from the transferor to the transferee for federal income tax purposes, the transferee must add any remaining deductions allowed under subsection (a) of this section to the basis of the transferred asset and depreciate the adjusted basis over any remaining life of the asset. Notwithstanding the provisions of subsection (a) of this section, the transferor and any owner in a transferor are not

allowed any remaining future bonus depreciation deductions associated with the transferred asset. This subsection applies only to the extent that each transferor or owner in a transferor that added bonus depreciation to its federal taxable income or adjusted gross income associated with the transferred asset certifies in writing to the transferee, that the transferor or owner in a transferor will not take any remaining future bonus depreciation deduction associated with the transferred asset.

(f) Prior Transactions. – For any transaction meeting the requirements of subsection (e) of this section prior to January 1, 2013, the transferor and transferee can make an election to make the basis adjustment allowed in that subsection on the transferee's 2013 tax ~~return, to the extent that the~~ return provided the following conditions are met:

(1) The transferor and any owner in a transferor has not taken the bonus depreciation deduction on a prior ~~return and provided that the~~return.

(2) The transferor is not allowed any remaining future bonus depreciation deductions associated with the transferred asset and each transferor or owner in a transferor certifies in writing to the transferee that the transferor or owner in a transferor will not take any remaining deductions allowed under subsection (a) of this section for tax years beginning on or after January 1, 2013, for depreciation associated with the transferred asset.

(3) The amount of the basis adjustment under this subsection is limited to the total remaining future bonus depreciation deductions forfeited by the transferor and any owner in the transferor at the time of the transfer.

…

(h) Definitions. ~~For purposes of this section, a "transferor" is an~~ The following definitions apply in this section:

(1) Transferor. – An individual, partnership, S Corporation, limited liability company, or an estate or trust that does not fully distribute income to its ~~beneficiaries, and an "owner in a transferor" is a~~ beneficiaries.

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

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

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

SECTION 8.(c) G.S. 105-134.6A is repealed.

SECTION 8.(d) G.S. 105-153.6 reads as rewritten:

"(c) Section 179 Expense. – For purposes of this subdivision, the definition of section 179 property has the same meaning as under section 179 of the Code as of January 2, 2013. A taxpayer who places section 179 property in service during a taxable year listed in the table below must add to the taxpayer's federal taxable income or adjusted gross income, as appropriate, eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code exceeds the dollar and investment limitation listed in the table below for that taxable year. For taxable years before 2012, the taxpayer must add the amount to the taxpayer's federal taxable income. For taxable year 2012 and after, the taxpayer must add the amount to the taxpayer's adjusted gross income.

A taxpayer is allowed to deduct twenty percent (20%) of the add-back in each of the first five taxable years following the year the taxpayer is required to include the add-back in income.

Taxable Year of 85% Add-Back	**Dollar Limitation**	**Investment Limitation**
2010	$250,000	$800,000
2011	$250,000	$800,000
2012	$250,000	$800,000
2013	$25,000	~~$125,000~~$200,000"

…

(e) Bonus Asset Basis. – In the event of an actual or deemed transfer of an asset occurring on or after January 1, 2013, wherein the tax basis of the asset carries over from the transferor to the transferee for federal income tax purposes, the transferee must add any remaining deductions allowed under subsection (a) of this section to the basis of the transferred asset and depreciate the adjusted basis over any remaining life of the asset. Notwithstanding the provisions of subsection (a) of this section, the transferor and any owner in a transferor are not allowed any remaining future bonus depreciation deductions associated with the transferred asset. This subsection applies only to the extent that each transferor or owner in a transferor that added bonus depreciation to its federal taxable income or adjusted gross income associated with the transferred asset certifies in writing to the transferee, that the transferor or owner in a transferor will not take any remaining future bonus depreciation deduction associated with the transferred asset.

(f) Prior Transactions. – For any transaction meeting the requirements of subsection (e) of this section prior to January 1, 2013, the transferor and transferee can make an election to make the basis adjustment allowed in that subsection on the transferee's 2013 tax ~~return, to the extent that the~~ return provided the following conditions are met:

(1) The transferor and any owner in a transferor has not taken the bonus depreciation deduction on a prior ~~return and provided that the~~return.

(2) The transferor is not allowed any remaining future bonus depreciation deductions associated with the transferred asset and each transferor or owner in a transferor certifies in writing to the transferee that the transferor or owner in a transferor will not take any remaining deductions allowed under subsection (a) of this section for tax years beginning on or after January 1, 2013, for depreciation associated with the transferred asset.

(3) The amount of the basis adjustment under this subsection is limited to the total remaining future bonus depreciation deductions forfeited by the transferor and any owner in the transferor at the time of the transfer.

…

(h) Definitions. ~~– For purposes of this section, a "transferor" is an~~ The following definitions apply in this section:

(1) Transferor. – An individual, partnership, S Corporation, limited liability company, or an estate or trust that does not fully distribute income to its ~~beneficiaries, and an "owner in a transferor" is a~~ beneficiaries.

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

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

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

SECTION 8.(e) Subsections (c) and (d) of this section are effective for taxable years beginning on or after January 1, 2014. The remainder of this section is effective for taxable years beginning on or after January 1, 2013.

SECTION 9.(a) G.S. 105-277.3(d1) reads as rewritten:

"(d1) ~~Exception for Easements on Qualified~~ Conservation ~~Lands Previously Appraised at Use Value.~~ Exception. – Property that is appraised at its present-use value under G.S. 105-277.4(b) shall continue to qualify for appraisal, assessment, and taxation as provided in G.S. 105-277.2 through G.S. 105-277.7 as long as ~~(i) the property is subject to an enforceable conservation easement that would qualify for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12, without regard to actual production or income requirements of this section; and (ii) the taxpayer received no more than seventy-five percent (75%) of the fair market value of the donated property interest in compensation.~~the property is subject to a conservation easement that meets the property eligibility requirements under G.S. 113A-232. Notwithstanding G.S. 105-277.3(b) and (b1), subsequent transfer of the

property does not extinguish its present-use value eligibility as long as the property remains subject to ~~an enforceable~~ a qualifying conservation ~~easement that qualifies for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12.~~ easement. The exception provided in this subsection applies only to that part of the property that is subject to the easement."

SECTION 9.(b) G.S. 113-77.9(d) reads as rewritten:

"(d) Acquisition. – The Department of Administration may, pursuant to G.S. 143-341, acquire by purchase, gift, or devise all lands selected by the Trustees for acquisition pursuant to this Article. Title to any land acquired pursuant to this Article shall be vested in the State. A State agency with management responsibility for land acquired pursuant to this Article may enter into a management agreement or lease with a county, city, town, or private nonprofit organization ~~qualified under G.S. 105-151.12 and G.S. 105-130.34 and~~ certified under section 501(c)(3) of the Internal Revenue Code to aid in managing the land. A management agreement or lease shall be executed by the Department of Administration pursuant to G.S. 143-341."

SECTION 9.(c) G.S. 113A-231 reads as rewritten:

"**§ 113A-231. Program to accomplish conservation purposes.**

The Department of Environment and Natural Resources shall develop a nonregulatory program ~~that uses conservation tax credits as a prominent tool~~ to accomplish conservation purposes, including the maintenance of ecological systems. As a part of this program, the Department shall exercise its powers to protect real property and interests in real ~~property:~~ property donated for ~~tax credit under G.S. 105-130.34 or G.S. 105-151.12; conserved with the use of other financial incentives; or, conserved through nonregulatory programs.~~ conservation or conserved by other means. The Department shall call upon the Attorney General for legal assistance in developing and implementing the program."

SECTION 9.(d) G.S. 113A-232 reads as rewritten:

"**§ 113A-232. Conservation Grant Fund.**

(a) Fund Created. – The Conservation Grant Fund is created within the Department of Environment and Natural Resources. The Fund shall be administered by the Department. The purpose of the Fund is to stimulate the use of conservation ~~easements and conservation tax credits,~~ easements, to improve the capacity of private nonprofit land trust organizations to successfully accomplish conservation projects, to better equip real estate related professionals to pursue opportunities for conservation, to increase landowner participation in land and water conservation, and to provide an opportunity to leverage private and other public monies for conservation easements.

(b) Fund Sources. – The Conservation Grant Fund shall consist of any monies appropriated to it by the General Assembly and any monies received from public or private sources. Unexpended monies in the Fund that were appropriated from the General Fund by the General Assembly shall revert at the end of the fiscal year unless the General Assembly otherwise provides. Unexpended monies in the Fund from other sources shall not revert and shall remain available for expenditure in accordance with this Article.

(c) Property Eligibility. – In order for real property or an interest in real property to be the subject of a grant under this Article, the real property or interest in real property must meet all of the following conditions:

(1) ~~possess~~ Possess or have a high potential to possess ecological ~~value, must be~~ value.

(2) Be reasonably ~~restorable, and must qualify for tax credits under G.S. 105-130.34 or G.S. 105-151.12.~~restorable.

(3) Be useful for one or more of the following purposes:

a. Public beach access or use.

b. Public access to public waters or trails.

c. Fish and wildlife conservation.

d. Forestland or farmland conservation.

e. Watershed protection.
f. Conservation of natural areas as that term is defined in G.S. 113A-164.3(3).
g. Conservation of predominantly natural parkland.

(4) Be donated in perpetuity to and accepted by the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions under G.S. 105-130.9. Land required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance do not qualify.

(c1) Grant Eligibility. – State conservation land management agencies, local government conservation land management agencies, and private nonprofit land trust organizations are eligible to receive grants from the Conservation Grant Fund. Private nonprofit land trust organizations must be ~~qualified pursuant to G.S. 105-130.34 and G.S. 105-151.12 and must be~~ certified under section 501(c)(3) of the Internal Revenue ~~Code.~~Code to aid in managing the land.

(d) Use of Revenue. – Revenue in the Conservation Grant Fund may be used only for the following purposes:

(1) The administrative costs of the Department in administering the Fund.
(2) Conservation grants made in accordance with this Article.
(3) To establish an endowment account, the interest from which will be used for a purpose described in G.S. 113A-233(a)."

SECTION 9.(e) G.S. 113A-233 reads as rewritten:

"**§ 113A-233. Uses of a grant from the Conservation Grant Fund.**

(a) Allowable Uses. – A grant from the Conservation Grant Fund may be used only to pay for one or more of the following costs:

(1) Reimbursement for total or partial transaction costs for a donation of real property or an interest in real property from an individual or corporation satisfying either of the following:
a. Insufficient financial ability to pay all costs or insufficient taxable income to allow these costs to be included in the donated value.
b. Insufficient tax burdens to allow these costs to be offset by ~~the value of tax credits under G.S. 105-130.34 or G.S. 105-151.12 or by~~ charitable deductions.

(2) Management support, including initial baseline inventory and planning.
(3) Monitoring compliance with conservation easements, the related use of riparian buffers, natural areas, and greenways, and the presence of ecological integrity.
(4) Education on conservation, including information materials intended for landowners and education for staff and volunteers.
(5) Stewardship of land.
(6) Transaction costs for recipients, including legal expenses, closing and title costs, and unusual direct costs, such as overnight travel.
(7) Administrative costs for short-term growth or for building capacity.

(b) Prohibition. – The Fund shall not be used to pay the purchase price of real property or an interest in real property."

SECTION 9.(f) G.S. 113A-256(g) is repealed.

SECTION 10.(a) G.S. 105-309(d) reads as rewritten:

"(d) Personal property shall be listed to indicate the township and municipality, if any, in which it is taxable and shall be itemized by the taxpayer in such detail as may be prescribed by

an abstract form approved by the Department of Revenue. ~~Personal property shall also be listed to indicate which property, if any, is subject to a tax credit under G.S. 105-151.21.~~

(1) If the assessor considers it necessary to obtain a complete listing of personal property, the assessor may require a taxpayer to submit additional information, inventories, or itemized lists of personal property.

(2) At the request of the assessor, the taxpayer shall furnish any information the taxpayer has with respect to the true value of the personal property the taxpayer is required to list."

SECTION 10.(b) G.S. 105-320(a)(16) is repealed.

SECTION 11. Except as otherwise provided, this act is effective when it becomes law.