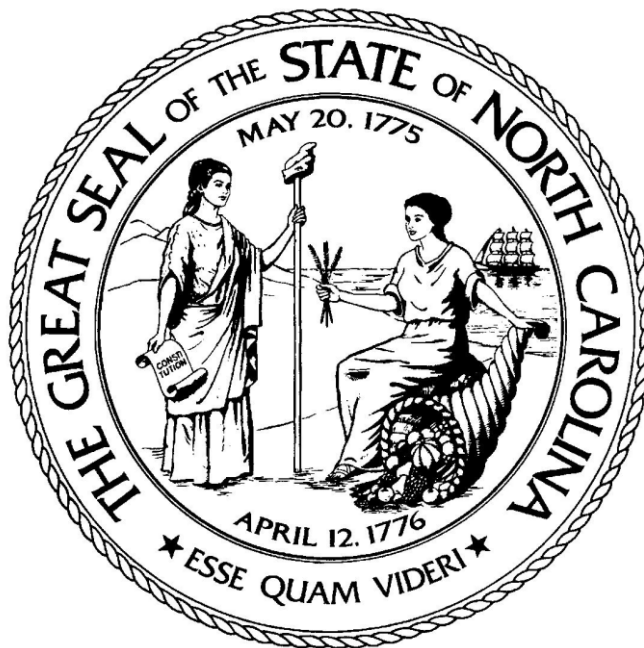


**2013-2014
REVENUE LAWS STUDY
COMMITTEE**



**REPORT TO THE 2015-2016
GENERAL ASSEMBLY OF NORTH CAROLINA
2015 SESSION**

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

Senator Bill Rabon, Co-Chair

Representative Julia C. Howard, Co-Chair

January 13, 2015

TO THE MEMBERS OF THE 2014 GENERAL ASSEMBLY:

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

Respectfully Submitted,

Sen. Bill Rabon, Co-Chair

Rep. Julia C. Howard, Co-Chair

2013-2014

REVENUE LAWS STUDY COMMITTEE

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¹ Resigned 04-08-2014.

² Appointed 05-06-2014, to fill the unexpired term of Senator Dan Clodfelter. A former advisory member to the Committee.

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 20 members, 10 appointed by the President Pro Tempore of the Senate and 10 appointed by the Speaker of the House of Representatives.¹ Committee members may be legislators or citizens. The Co-Chairs for 2013-2014 are Senator Bill Rabon and Representative Julia Howard.

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

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

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

<http://www.ncleg.net/DocumentSites/committees/revenuelaws/Homepage/index.html>.

COMMITTEE PROCEEDINGS

Last year the Revenue Laws Study Committee recommended an omnibus tax law changes bill to the 2014 General Assembly, House Bill 1050 and Senate Bill 763. The General Assembly enacted House Bill 1050, S.L. 2014-3. The omnibus bill did the following:

- It addressed questions and concerns surrounding the Tax Simplification and Reduction act enacted by the General Assembly in 2013, S. L. 2013-316.
- It replaced the corporate income tax deduction for net economic loss with a deduction for State net loss.
- It substantially changed the applicability of the sales tax laws to retailer-contractors, such as the major home improvement stores, when they are engaged in a performance contract rather than a retail sale.
- It enhanced the collection enforcement capabilities of the Department of Revenue by requiring a person to file all State tax returns and pay all State taxes to receive and hold an ABC permit.
- It provided for the central assessment of mobile telecommunications property by the State.
- It modified and repealed local privilege license taxes.
- It set the License Plate Agent transaction rate for the collection of property tax under the Tax & Tag Together program.
- It imposed an excise tax on vapor products.
- And made many other technical, clarifying, and administrative changes to the tax laws.

The Revenue Laws Study Committee met four times after the adjournment of the 2014 Regular Session of the North Carolina General Assembly. 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.³ The Committee considered a broad array of issues. It considers 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.

REVENUE LAWS TECHNICAL CHANGES

After passage of the House Bill 1059 early in the 2014 Session, the companion bill, Senate Bill 763, became the primary vehicle for additional revenue laws technical changes and passed the Senate in late July. However, a number of substantive provisions were added to the bill on the House floor, in which the Senate did not concur. The non-roll call changes were then put into House Bill 1224 and the roll call technical changes were put into House Bill 189. Neither of those bills passed. The Committee reviewed these technical changes at the October 14, 2014, meeting and decided to recommend them to the 2015 General Assembly.

Legislative Proposal #1 incorporates the Revenue Laws technical changes that were circulated during the 2014 Session in Senate Bill 763, House Bill 1224, and House Bill 189, or some combination thereof. In addition to those changes, the Committee decided to make a few additional technical, clarifying, and administrative changes and they are included in Legislative Proposal #1.

The Tax Simplification and Reduction Act and Utility Rates

³ <http://www.ncleg.net/committees/revenuelaws>

The Tax Simplification and Reduction Act, S.L. 2013-316, included electricity and piped natural gas in the State sales tax base while repealing the utility franchise tax on electricity and the excise tax on piped natural gas. Section 4.2(a) of the Act directed the Utilities Commission to adjust the rates of electricity and piped natural gas to reflect the repeal of the utility franchise tax and the excise tax on piped natural gas. The Act also reduced the corporate income tax rate. However, the Act did not direct the Utilities Commission to take any action on utility rates related to the reduction in corporate income tax rates.

In May of 2014 the Commission issued an order directing utilities to adjust rates to reflect the repeal of the utility franchise tax, the repeal of the excise tax on piped natural gas, and the reduction in the corporate income tax rate. Dominion Power and PSNC Energy both appealed this order, on the grounds that the Act did not direct the Commission to take action related to the reduction in the corporate income tax rate.

In October of 2014 the Commission reversed its first order. The Commission authorized the utilities not to reduce their rates related to the changes in the corporate income tax rate, and authorized any utility that had previously reduced rates for this reason to recover those funds from customers. No utility has taken this step of seeking to recover these funds from customers. Except for Dominion Power, all of the retail electric and piped natural gas utilities are passing on the savings from the reduction in the corporate income tax rates to their customers.

The Committee discussed this issue at its November 18th meeting and expressed its agreement with the initial order of the Utilities Commission. Section 4 of Legislative Proposal #1 clarifies the intent of the General Assembly regarding the impact of the Tax Reduction Act on utility rates. This provision would direct the Commission to adjust

utility rates to reflect the reduction in the corporate income tax rate and would also direct the Commission to impose interest on any refunds issued to utility customers as a result of reduction in the corporate income tax rate.

Contract with a Farmer

Prior to July 1, 2014, a person received a sales tax exemption on building materials, supplies, fixtures, and equipment if the facility for which the materials and equipment were purchased was used for a farm purpose. The person purchasing the tangible personal property did not need to be a farmer to qualify for the exemption. The only qualification was the use of the property.

Effective July 1, 2014, a person who farms must qualify to be exempt from paying sales tax on tangible personal property used for farm related purchases. To qualify, a farmer must average \$10,000 or more a year over a three-year period. Under the law change, the multiple sales tax exemptions related to farming were consolidated into one statute, G.S. 105-164.13E, and a person has to be a qualifying farmer to purchase the property exempt from sales tax.

The Department of Revenue issued a notice on November 18, 2014, that purchases of tangible personal property used to fulfill a lump-sum contract with a qualifying farmer would be subject to sales tax. The Committee discussed this unintended consequence at its meeting on December 9, 2014. The Committee approved an amendment to G.S. 105-164.13E to provide that tangible personal property purchased to fulfill a contract with a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate is exempt from sales and use tax to the same extent as if purchased directly by the person who holds the exemption certificate. This change is included in Section 13 of Legislative Proposal #1.

IRC UPDATE

Legislative Proposal #2

ROLLOVER CONTRIBUTIONS INTO QUALIFYING *BAILEY* PLANS

A question appeared in the newspaper column *Money Matters* asking whether it was true a person could avoid paying as much as \$116,000 in State income tax by transferring an IRA rollover valued at more than \$2 million into a Bailey vested State retirement plan. The answer was yes.

G.S. 105-153.5 exempts from State income tax the amount received during the taxable year from one or more State, local, or federal government retirement plans to the extent the amount is exempt from tax pursuant to a court order in settlement of one or more of three cited cases. These cases are commonly referred to as the *Bailey* case. A person is a member of the *Bailey* class if the person vested in one or more of the governmental retirement plans on or before August 12, 1989. The exemption applies to not only any defined benefits the retiree receives but also to any income distributed to the retiree from a supplemental retirement income plan, such as a 401(k) or a 457 plan.

The exemption originates from a U.S. Supreme Court case decided in 1989, *Michigan v. Davis*. Prior to 1989, many states, including North Carolina, provided state employees a retirement benefit in the form of an exemption from paying state income tax on their retirement income received from a state retirement plan. The U.S. Supreme Court ruled those tax exemptions violated the principle of intergovernmental immunity because the states did not provide a similar exemption for federal retirement income. States had to choose between exempting all governmental retirement income or taxing

it. North Carolina chose to grant a \$4,000 income tax exemption for government retirement benefits.

Vested State employees sued the State arguing the change in the law was an unconstitutional impairment of contract. The N.C. Supreme Court ruled in favor of the State employees in *Bailey v. North Carolina*. Based on a trial court Order Approving Class Action Settlement on October 7, 1998, any governmental employee who vested prior to August 12, 1989, does not pay State income tax on retirement benefits received from a government retirement plan. The Court issued several subsequent orders resolving questions about eligibility. One of the orders, issued in November 1998, held that participants in the State's Supplement Retirement Income Plan, (a 401(k) plan), or the State's Deferred Compensation Plan, (a 457 plan), are vested in the plan as of August 12, 1989, if they contributed to the plan by that date. If a person is vested in the plan, then all future withdrawals from the plan are exempt from tax.

In 2002, the federal laws with respect to pension portability became much more flexible. The changes provided that contributions into most types of retirement plans could be rolled over into another retirement plan or IRA. The Department of Revenue issued Directive PD-03-1 to address the tax consequences of rolling over amounts from non-qualifying *Bailey* retirement accounts into a qualifying *Bailey* retirement account. Under that directive, issued on June 30, 2003, the Department advised that if a *Bailey* retirement account included rollover contributions from a non-qualifying *Bailey* retirement account that only a portion of the distributions received would be exempt from State income tax. The Department based its directive on the rationale used by Superior Court Judge Jack A. Thompson in his Order Regarding the Optional Retirement Program (ORP) for State Institutions of Higher Education, signed on

November 19, 1999. This Order addressed when a participant in the ORP is vested and how to determine the portion of the retirement benefits in the ORP that are subject to future income tax exemption under the *Bailey* settlement. This position was also consistent with the treatment of distributions from the Thrift Savings Plan when a participant in the Plan was "vested" in the employee component but not in the employer fixed percentage component as of August 12, 1989. A copy of PD-03-1 may be found in Appendix #.

After the issuing of Directive PD-03-1, the Department received several questions about its decision to tax a portion of a distribution from a qualifying tax-exempt *Bailey* retirement account that included rollover contributions from IRAs or other retirement plans. The Department sought an opinion from the North Carolina Attorney General. The Advisory Opinion issued by the Attorney General's Office advised that all benefits from state-created and state-administered plans should be treated as exempt from State income taxes if paid to persons vested in those plans as of August 12, 1989, regardless of the source of the funds. The AG's opinion noted that the heart of the *Bailey* decision is the principle that the State entered into a contract with members and retirees of various State-created retirement plans, and part of that contract was that the benefits paid from those plans would be exempt from tax. Nothing in *Bailey* suggested that the contract for a tax exemption is limited to specific benefits contained in statutes or plan documents as of August 12, 1989. The opinion acknowledged that federal laws have enhanced the benefits available through *Bailey* accounts, including their investment options and portability; however, it advised that a plan's particular source of funding does not prevent the nature of its distribution from qualifying as benefits that are tax exempt under the *Bailey* decision.

The Department issued a new Directive in accordance with the AG's opinion, PD-04-1. A copy of PD-04-1 may be found in **Appendix #**. Upon the issuance of the new Directive, the number of *Bailey* eligible participants choosing to make rollover contributions into their *Bailey* eligible plan increased from less than 200 in the beginning of 2004 to more than 1,400 in 2006. The number of *Bailey* eligible participants making rollover contributions into a *Bailey* eligible plan has plateaued since 2007. In 2013, 441 *Bailey* plan participants made *Bailey* eligible rollovers totaling \$21,516,823. The present value of the tax exemption for these 2013 rollovers, using a 5.75% personal income tax rate, is \$1.2 million. It is difficult to estimate the fiscal impact of the tax exemption for a given year because these rollover amounts are not subject to tax until the recipient receives a distribution.

Members of the Committee expressed dismay over the tax strategy that allows a person to exempt from State income tax distributions from a private retirement plan that would otherwise be taxable except for the fact the person rolled the funds over into a State government *Bailey* plan. The Committee looked at various alternatives to eliminate this tax-planning strategy that allows a person to avoid paying tax that would otherwise be due and payable. Steven Long, an attorney with Parker Poe Adams & Bernstein, who specializes in pension law, spoke to the Committee and suggested one alternative would be to prohibit rollovers into a *Bailey* account. Under federal law, sponsors of a 401(k) or a 457 plan must allow rollovers out of the plan but are not required to accept rollover contributions into their plans. Although employers are not required to accept rollovers into their defined contribution plans, almost all of them do. The Committee decided this policy alternative would not be good pension policy, and it would not address the tax avoidance of past rollover contributions.

The Committee considered a second alternative that may be found in **Legislative Proposal #3 {or Appendix #}**. The bill draft would limit the tax exemption for retirement plan distributions from a qualifying *Bailey* account to the portion of the distribution attributable to a State, local, or federal government retirement plan. The portion of a distribution from a qualifying *Bailey* account that is attributable to a rollover from a private retirement account would be taxable. The draft provides that the portion of a distribution that is taxable would be determined in accordance with the methodology used by Superior Court Judge Jack A. Thompson in his Order Regarding the Optional Retirement Program for State institutions for Higher Education, signed on November 19, 1999. The bill draft essentially codifies the Department's first directive on this issue, PD-03-1.

OTHER ISSUES CONSIDERED BY THE REVENUE LAWS STUDY COMMITTEE

The Committee reviewed many other issues during this interim, but it did not recommend any changes relative to those issues.

Accrual Basis of Sales Tax Reporting

During the December 9th meeting, the Committee heard a staff presentation on the accrual basis of reporting sales tax liability. The presentation distinguished the time that sales tax accrues and is due to the State from the time that revenue accrues using an example of a business transaction with accounting entries based on Generally Accepted Accounting Principles.

Sales tax is accrued to the State and should be recognized on a taxpayer's books when sales tax liability is incurred. Sales tax liability is incurred and thus accrued when there is a taxable transaction, even if revenue is not accrued at that time because the

taxpayer has not fulfilled its obligation to the customer. Taxpayers reporting sales tax on the accrual basis are required to report and remit sales tax on the tax return for the period during which sales tax liability is accrued.

Sharing Economy

At its November 18th meeting, the Committee heard an overview of the various regulatory and tax issues associated with two types of businesses that are part of the “sharing economy,” a term coined to describe business models based upon the peer-to-peer sharing of assets and resources. The first type of business discussed was the short-term rental industry, which has been popularized by Airbnb, an Internet platform that connects homeowners with potential guests seeking to rent out a room or an entire home as an alternative to traditional lodging establishments. The second type of business discussed was digital dispatch services, like Uber and Lyft, which are app-based taxi services. These companies provide an Internet platform connecting passengers with available and proximate drivers who are independent contractors of the dispatch service. Given that these businesses are relatively new business models, the law tends to lag behind in terms of addressing them. To the extent they fall within gaps of a pre-existing regulatory scheme, the more traditional, established industries with whom they compete argue this creates an uneven playing field.

Turning to the short-term rental industry, the increase in popularity of peer-to-peer travel sites has resulted in a number of regulatory and tax issues, culminating in an uneven playing field argument by the traditional lodging industry. Under current law, a person who rents his house to transients for more than 15 days of the year is considered a retailer and is obligated to collect and remit sales tax and occupancy tax on the rental. The lodging industry is concerned that there is a high degree of

undercompliance by homeowners who rent their homes on sites like Airbnb. Undercompliance also means that the State and local governments are missing out on a potential revenue source. Since this is a compliance issue rather than an imposition issue, the question arises as to whether there is a more effective manner to collect the tax, such as requiring the Internet platform to remit the tax rather than the homeowner. Arguably, the current law may already require this. A “facilitator” is a person who is not a rental agent and who contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer. Facilitators have reporting and remittance obligations to the retailers with whom they contract based on the portion of the sales price the consumer pays the facilitator over and above the amount for a room charged to the facilitator by the retailer. While these requirements may apply to peer-to-peer travel sites, they were directed at online travel companies when enacted in 2010; peer-to-peer travel sites may or may not fit neatly within the current statutory scheme.

The General Assembly could choose to amend the statutes to more specifically require sites like Airbnb to collect sales and occupancy tax. The issue raised by that course of action is whether these businesses have constitutional nexus with this State such that a collection and remittance requirement would be enforceable. A business must have a physical presence in a state in order for that state to require the business to collect the state’s sales tax. With lodging rentals, the question is whether a business that provides an Internet platform for homeowners to list their real property for short-term rental in North Carolina meets the physical presence test. As with most constitutional questions, until there is case law on point, the answer is often unclear. However, the nexus issue does not prevent the General Assembly from passing legislation along these lines; the issue is whether the legislation would actually result in increased collections.

Finally, a third issue related to the tax arena is the desire of online travel companies and peer-to-peer travel sites to have a central point of collection for occupancy tax. Currently, occupancy tax is collected at the local level by the unit of government that levies it, which means that there are over 150 collectors of the occupancy tax. Unlike the nexus issue, which cannot be resolved legislatively, the administrative issue could be. While central collection would ease compliance for these companies, it would also generate new responsibilities and expense for the Department of Revenue, and it would remove a responsibility that certain local governments may very well want to maintain.

The other side of the “uneven playing field” coin is the regulatory aspect. At the meeting, representatives of the lodging industry voiced concern that homeowners do not have to comply with the health and safety regulations that traditional hotels and bed and breakfasts do. Current law exempts establishments with four or fewer lodging units and private homes that occasionally offer lodging.

The Committee next heard presentations explaining digital dispatch services including presentations by two services operating in the State: Uber and Lyft. Section 9 of House Bill 272, S.L. 2014-108, directed the Revenue Laws Study Committee to “study the registration requirements, fees, and penalties applicable to for hire passenger vehicles, including for hire passenger vehicles directed by digital dispatching services.” The term “digital dispatching services” appears in the General Statutes but is not defined. The term is understood to refer to services where the service operates an app that matches customers and drivers similar to a limousine service. A more widely used term for the service is Transportation Network Companies (TNC). Uber is the world’s

largest TNC and operates in 10 cities in the State: Asheville, Charlotte, Winston-Salem, High Point, Greensboro, Chapel Hill, Durham, Raleigh, Fayetteville, and Wilmington.

TNC, like Uber and Lyft, are national companies that recruit drivers to join their networks either full-time or part-time. The drivers are independent contractors and operate their own passenger cars. Customers download the TNC's app to a smartphone; create an account using a credit card, and request transportation on the TNC's app using GPS to fix their location. The TNC sets the price for transportation. The TNC bills the customer's credit card making the transaction cashless between the customer and the driver. The charges for transportation are based on service fees, distance, and time. TNC vary their charges based on supply and demand and increase fares during peak times, called surge pricing.

Traditional taxi and limousine services are regulated by local government under G.S. 160A-304. House Bill 74, S.L. 2013-413, Regulatory Reform Act of 2013, excluded "digital dispatching services" from the authorization to regulate traditional taxi and limousine services. While TNC operate without local oversight, State-level laws apply to all "Vehicles transporting persons for compensation" under G.S. 20-4.01(27)(b) which defines "For hire passenger vehicles." For hire vehicles have special license plates and must carry \$1.5 million of continuous (24/7) liability insurance. Cars dispatched by TNC are not complying with the requirements for insurance and license plates.

TNC have a new business model compared to traditional taxis and limousines. Vehicles are not solely devoted to commercial operation. The TNC model introduces the concept of switching between commercial operation and private operation when drivers decide they want to work and turn on the TNC's app. The existing law is based

on vehicles dedicated to commercial use requiring continuous (24/7) commercial insurance coverage.

The Committee heard presentations from Uber and Lyft and discussed the major issues surrounding the TNC business model including compliance with existing State law, background checks for drivers, fares, commercial license plates, and insurance. TaxiTaxi also presented to the Committee, offering the perspective of a traditional taxi company that complies with State and local regulations that apply to for hire vehicles. The President of TaxiTaxi told the Committee that TNC should comply with the same regulations and carry the same liability insurance as traditional taxi companies.

The Committee heard a presentation from the Property Casualty Insurers Association of America (PCI). PCI offered background about the exclusion in private passenger car insurance policies for commercial operation, called the livery exclusion. Uber and Lyft voluntarily provide insurance while private cars are operating at the direction of the TNC. The exact types of losses within the policies and the coverage amounts vary between each TNC because no uniform rules apply – unless the statewide for hire rules are found to apply.

The Committee actively questioned the presenters and heard policy arguments about TNC and the underlying issues of TNC's business model, such as background checks for drivers, fares, commercial license plates, and insurance requirements. The Committee did not recommend specific action on this issue. Both Co-Chairs commented that the regulatory issues presented by TNC services are not related to the mission of the Revenue Laws Study Committee.

Sales Tax on Internet Access Service

The Internet Tax Freedom Act was enacted by Congress in 1998. The Act prohibits states from imposing sales tax on internet access service. In 2005, Congress expanded the definition of “internet access service” to include telecommunications services purchased to provide internet access service. The moratorium on the taxation of internet access service was extended by Congress multiple times. At the time of the December meeting of the Committee, the moratorium was set to expire on December 11, 2014. The Committee recommended that the statutes be amended to provide notice of 90 days to providers if the Act was allowed to expire. Congress ultimately extended the Act until October 1, 2015.

Worker Misclassification

At the October 14th meeting, the Revenue Laws Study Committee heard from staff and State agencies about the problem of worker misclassification. Worker misclassification occurs when an employer incorrectly classifies a worker as an independent contractor rather than an employee, avoiding the expense of payroll taxes (Social Security, Medicare and Unemployment Insurance). In addition, employers are not required to withhold income taxes for independent contractors.

McClatchy News published a series of articles on worker misclassification in September of 2014. The series used public information available from government-subsidized housing projects to determine the number of workers on the projects who were misclassified. According to the data, 35% of 8,713 workers were incorrectly treated as independent contractors in the projects dating back to 2009. The news reports applied the 35% misclassification rate to construction industry in NC to estimate the total amount of unpaid state and federal taxes.

The estimated impact of unpaid state income and unemployment insurance taxes was \$134 million. The amount of unpaid federal income and payroll taxes was \$333 million for a total impact of \$467 million. These amounts assume that the 35% misclassification rate found in the subsidized housing projects was the same for the construction industry as a whole in North Carolina. It also assumes that the employees treated as independent contractors paid no taxes as required for workers receiving a 1099 statement of income received from an employer.

The Committee heard from three State agencies about their efforts to reduce the rate of worker misclassification: the Department of Revenue; the Division of Employment Security; and the Industrial Commission. In addition, the Committee heard a presentation from the Government Data Analytics Center (GDAC), which collects and analyzed data to help agencies more easily identify worker misclassification problems.

The Department of Revenue indicated that they currently have adequate resources to manage worker misclassification through information sharing with the Internal Revenue Service and internal compliance initiatives. The Division of Employment Security uses leads from other employers, claimants and GDAC to identify potential misclassification cases. When a case is identified, the agency applies IRS standards to determine whether employees should be classified as employees rather than independent contractors. When a claimant is incorrectly classified as an independent contractor, the employer is notified and billed for unemployment insurance taxes and the claimant is paid benefits if eligible.

The Industrial Commission works with other agencies, including GDAC, to identify instances in which worker's compensation insurance is not provided to

employees when required. Efforts are focused on historically problematic industries, including construction and health care. All agencies agreed they have necessary resources devoted to reducing the rate of worker misclassification and no further action was recommended by the Committee.

State and Local Government Responsibility

Over the past several years the General Assembly has considered legislation that would either amend distributions of tax revenues to local governments or would amend the authority of local governments to impose local taxes. When legislation is considered that would impact local revenue, questions would often arise as to what are the fiscal responsibilities of the local governments. To start to address these questions, the Committee heard from Kara Millonzi, Associate Professor of Public Law and Government and the UNC-CH School of Government on local government functions in the State. At the December meeting of the Committee Ms. Millonzi discussed government structure in the State, what services and functions each level of local government are required to provide, and the sources of local government revenue.

Permanent License Plates

S.L. 2014-96 directed the Revenue Laws Study Committee to review the requirements and eligibility for permanent registration plates and to examine the costs incurred by the Division of Motor Vehicles to administer permanent registration plates. In 2011, the General Assembly directed the Program Evaluation Division to evaluate the effectiveness and efficiency of state-owned passenger and non-passenger vehicles. Part of that effort included an analysis of the State's permanent license plates issued to non-state entities. At its November 18 meeting, Pamela Taylor, Principal Program Evaluator, Program Evaluation Division, provided the Committee with a brief overview of the

history of this issue and the current law. Prior to 2012, several entities were eligible to receive these permanent license plates including counties and municipalities, emergency rescue and fire departments, church buses, and certain nonprofit groups. The Program Evaluation Division report identified over 120,000 permanent license plates registered to non-state entities and found that 4,200 had been issued to entities not specifically identified in statute (N.C. Gen. Stat. § 20-84(b)). Based on the report's recommendations, Session Law 2012-159 limited eligibility for permanent registration plates to governmental entities and community colleges because these entities had been clearly defined by law and were serving public purposes. The law required all existing silver permanent plates for non-state entities to be cancelled and re-issued under new eligibility rules. As of September 2013, 103,394 orange and black plates had been issued to non-state entities. In 2014, the General Assembly clarified the law to allow DMV to issue permanent plates to motor vehicles owned by three additional entities – nonprofit corporations authorized to operate a charter school, federally recognized tribes, and sanitary districts. This presentation was informational, and the Committee did not take any action on this issue.

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Revenue Laws Study Committee makes the following recommendation to the 2015 General Assembly. The proposal is followed by an explanation and, if it has a fiscal impact, a fiscal memorandum, indicating any anticipated revenue gain or loss resulting from the proposal.

1. Revenue Laws Technical Changes.

LEGISLATIVE PROPOSAL

**AN ACT TO MAKE TECHNICAL AND
CLARIFYING CHANGES TO VARIOUS
TEVENUE LAWS, AS RECOMMENDED BY THE
REVENUE LAWS STUDY COMMITTEE.**

LEGISLATIVE PROPOSAL #1

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2015 REGULAR SESSION OF THE 2015 GENERAL ASSEMBLY

**AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO
VARIOUS REVENUE LAWS AS RECOMMENDED BY THE REVENUE
LAWS STUDY COMMITTEE.**

SHORT TITLE: Revenue Laws Technical Changes.

PRIMARY SPONSORS: Representatives

BRIEF OVERVIEW: This legislative proposal makes technical corrections and clarifying changes to the tax statutes largely based on recommendations of the Department of Revenue.

FISCAL IMPACT: See Fiscal Analysis Memorandum

EFFECTIVE DATE: Except as otherwise provided, 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 2015

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BILL DRAFT 2015-TDxz-5 [v.5] (10/13)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: Revenue Laws Technical Changes.

(Public)

Sponsors: (Primary Sponsor).

Referred to:

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

The General Assembly of North Carolina enacts:

SECTION 1.(a) Section 7.2(a) of S.L. 2014-3 reads as rewritten:

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

SECTION 1.(b) Section 7.3 of S.L. 2014-3 reads as rewritten:

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

SECTION 2.(a) Section 8.1(c) of S.L. 2014-3 reads as rewritten:

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

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

(2) A retailer is not liable for an undercollection of sales tax or occupancy tax for the rental of such an accommodation that is occupied or available to be occupied for nights beginning June 1, 2014, and ending June 30, 2014, if the retailer has made a good-faith effort to comply with the law and collect the proper amount of tax and has, due to the change under this section, overcollected or undercollected the amount of sales tax or occupancy tax that is due. This subsection applies only to the period beginning June 14, 2012, and ending July 1, 2014.tax."

1 **SECTION 2.(b)** This section becomes effective June 1, 2014.

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

3 **SECTION 4.(a)** Section 4.29(a) of S.L. 2013-316 reads as rewritten:

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

- 6 (1) Electricity to reflect the repeal of G.S. 105-116 and the resulting
7 liability of electric power companies for the tax imposed under
8 ~~G.S. 105-122 and for~~ G.S. 105-122, the increase in the rate of tax
9 imposed on sales of electricity under ~~G.S. 105-164.4.~~ G.S. 105-164.4,
10 and the reduction in the corporate income tax rate imposed under
11 G.S. 105-130.3.
- 12 (2) Piped natural gas to reflect the repeal of Article 5E of Chapter 105 of
13 the General Statutes, the repeal of the credit formerly allowed under
14 G.S. 105-122(d1), ~~and~~ the resulting liability of companies for the tax
15 imposed on sales of piped natural gas under ~~G.S. 105-164.4.~~
16 G.S. 105-164.4, and the reduction in the corporate income tax rate
17 imposed under G.S. 105-130.3.
- 18 (3) Public water and wastewater companies to reflect the repeal of
19 G.S. 105-116 and the resulting liability of public water and wastewater
20 companies under G.S. 105-122, and the reduction in the corporate
21 income tax rate imposed under G.S. 105-130.3."

22 **SECTION 4.(b)** The Utilities Commission must order a utility to add
23 interest to money refunded to its customers for refunds resulting from the reduction of
24 the corporate income tax rate as provided in section 1(a) of this act. The interest rate
25 applied to the refund must be set in accordance with G.S. 62-130.

26 **SECTION 4.(c)** Subsection (a) of this section is effective January 1, 2014.
27 The remainder of this section is effective when it becomes law and applies to refunds
28 issued on or after that date.

29 **SECTION 5.(a)** G.S. 105-113.35(d) reads as rewritten:

30 "(d) Manufacturer's Option. – A manufacturer who is not a retail dealer and who
31 ships tobacco products other than cigarettes to either a wholesale dealer or retail dealer
32 licensed under this Part may apply to the Secretary to be relieved of paying the tax
33 imposed by this section on the tobacco products. A manufacturer who ships vapor
34 products to either a wholesale dealer or retail dealer licensed under this Part may apply
35 to the Secretary to be relieved of paying the tax imposed by this section on the vapor
36 products shipped to either a wholesale dealer or retail dealer. Once granted permission,
37 a manufacturer may choose not to pay the tax until otherwise notified by the Secretary.
38 To be relieved of payment of the tax imposed by this section, a manufacturer must
39 comply with the requirements set by the Secretary.

40 Permission granted under this subsection to a manufacturer to be relieved of paying
41 the tax imposed by this section applies to an integrated wholesale dealer with whom the
42 manufacturer is an affiliate. A manufacturer must notify the Secretary of any integrated
43 wholesale dealer with whom it is an affiliate when the manufacturer applies to the
44 Secretary for permission to be relieved of paying the tax and when an integrated
45 wholesale dealer becomes an affiliate of the manufacturer after the Secretary has given
46 the manufacturer permission to be relieved of paying the tax.

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

8 **SECTION 5.(b)** This section becomes effective June 1, 2015.

9 **SECTION 6.** G.S. 105-129.16A reads as rewritten:

10 **"§ 105-129.16A. Credit for investing in renewable energy property.**

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

28"

29 **SECTION 7.** Section 1.1(a) of S.L. 2014-3 is rewritten to read:

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

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

34 ...

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

44 (4a) A State net loss as allowed under G.S. 105-130.8A. A corporation may
45 deduct its allocable and apportionable State net loss only from total
46 income allocable and apportionable to this State.

...."

SECTION 8.(a) G.S. 105-134.6A, as amended by S.L. 2014-3, reads as rewritten:

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

(1) Transferor. – An individual, partnership, corporation, 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 beneficiary or member.~~

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

SECTION 8.(b) G.S. 105-153.6, as amended by S.L. 2014-3, reads as rewritten:

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

(1) Transferor. – An individual, partnership, corporation, 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 beneficiary or member.~~

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

SECTION 8.(c) Subsection (a) of this section is effective for taxable years beginning on or after January 1, 2013. Subsection (b) of this section is effective for taxable years beginning on or after January 1, 2014. The remainder of this section is effective when it becomes law.

SECTION 9.(a) Notwithstanding G.S. 105-163.15, the Secretary of Revenue may not impose interest with respect to an underpayment of income tax to the extent the underpayment was created or increased by the changes made in Section 2.2 of S.L. 2014-3. Notwithstanding G.S. 105-163.8, a withholding agent is not liable for the amount of tax the agent fails to withhold to the extent the amount of tax not withheld was created or increased by the changes made in Section 2.2 of S.L. 2014-3.

SECTION 9.(b) This section is effective when it becomes law and applies to taxable years beginning on or after January 1, 2014, and before January 1, 2015, and to payroll periods beginning on or after January 1, 2014, and before January 1, 2015.

SECTION 10. G.S. 105-164.3(35), as amended by Section 14.7 of S.L. 2014-3, reads as rewritten:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

...

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

- 1 | a. Making—A person engaged in business of making sales at retail,
2 | offering to make sales at retail, or soliciting sales at retail of
3 | tangible personal property, digital property, or services for
4 | storage, use, or consumption in this State. When the Secretary
5 | finds it necessary for the efficient administration of this Article
6 | to regard any sales representatives, solicitors, representatives,
7 | consignees, peddlers, or truckers as agents of the dealers,
8 | distributors, consignors, supervisors, employers, or persons
9 | under whom they operate or from whom they obtain the items
10 | sold by them regardless of whether they are making sales on
11 | their own behalf or on behalf of these dealers, distributors,
12 | consignors, supervisors, employers, or persons, the Secretary
13 | may so regard them and may regard the dealers, distributors,
14 | consignors, supervisors, employers, or persons as "retailers" for
15 | the purpose of this Article.
- 16 | b. Delivering, —A person engaged in business of delivering,
17 | erecting, installing, or applying tangible personal property for
18 | use in this State, regardless of whether the property is
19 | permanently affixed to real property or other tangible personal
20 | property.
- 21 | c. Making—A person engaged in business of making a remote sale,
22 | if one of the conditions listed in G.S. 105-164.8(b) is met.
- 23 | d. A person, other than a facilitator, required to collect the tax
24 | levied under G.S. 105-164.4(a)."

25 | **SECTION 11.** G.S. 105-164.4G, as enacted by S.L. 2014-3, reads as
26 | rewritten:

27 | **"§ 105-164.4G. Entertainment activity.**

28 | ...
29 | (f) Exemptions. — The sale at retail and the use, storage, or consumption in this
30 | State of the following gross receipts derived from an admission charge to an
31 | entertainment activity are specifically exempt from the tax imposed by this Article:
32 | ...

33 | (g) Sourcing. — Admission—An admission charge to an entertainment activity is
34 | sourced to the location where admission to the entertainment activity may be gained by
35 | a person. When the location where admission may be gained is not known at the time of
36 | the receipt of the gross receipts for an admission charge, the sourcing principles in
37 | G.S. 105-164.4B(a) apply."

38 | **SECTION 12.** G.S. 105-164.13, as amended by Section 6.1(f) of S.L.
39 | 2014-3, reads rewritten:

40 | **"§ 105-164.13. Retail sales and use tax.**

41 | The sale at retail and the use, storage, or consumption in this State of the following
42 | tangible personal property, digital property, and services are specifically exempted from
43 | the tax imposed by this Article:
44 | ...

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

...

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

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

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

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

...

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

...."

SECTION 13.(a) G.S. 105-164.13E reads as rewritten:

'§ 105-164.13E. Exemption for farmers.

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

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

(1) ~~Fuel and~~ Fuel, piped natural gas, and electricity that ~~is~~ are measured by a separate meter or another separate device and used for a purpose

- 1 other than preparing food, heating dwellings, and other household
2 purposes.
- 3 (2) Commercial fertilizer, lime, land plaster, plastic mulch, plant bed
4 covers, potting soil, baler twine, and seeds.
- 5 (3) Farm machinery, attachment and repair parts for farm machinery, and
6 lubricants applied to farm machinery. The term "machinery" includes
7 implements that have moving parts or are operated or drawn by an
8 animal. The term does not include implements operated wholly by
9 hand or motor vehicles required to be registered under Chapter 20 of
10 the General Statutes.
- 11 (4) A container used in the planting, cultivating, harvesting, or curing of
12 farm crops or in the production of dairy products, eggs, or animals or
13 used in packaging and transporting the farmer's product for sale.
- 14 (5) A grain, feed, or soybean storage facility and parts and accessories
15 attached to the facility.
- 16 (6) Any of the following substances when purchased for use on animals or
17 plants, as appropriate, held or produced for commercial purposes. This
18 exemption does not apply to any equipment or devices used to
19 administer, release, apply, or otherwise dispense these substances:
- 20 a. Remedies, vaccines, medications, litter materials, and feeds for
21 animals.
- 22 b. Rodenticides, insecticides, herbicides, fungicides, and
23 pesticides.
- 24 c. Defoliants for use on cotton or other crops.
- 25 d. Plant growth inhibitors, regulators, or stimulators, including
26 systemic and contact or other sucker control agents for tobacco
27 and other crops.
- 28 e. Semen.
- 29 (7) Baby chicks and poults sold for commercial poultry or egg production.
- 30 (8) Any of the following items concerning the housing, raising, or feeding
31 of animals:
- 32 a. A commercially manufactured facility to be used for
33 commercial purposes for housing, raising, or feeding animals or
34 for housing equipment necessary for these commercial
35 activities. The exemption also applies to commercially
36 manufactured equipment, and parts and accessories for the
37 equipment, used in the facility.
- 38 b. Building materials, supplies, fixtures, and equipment that
39 become a part of and are used in the construction, repair, or
40 improvement of an enclosure or a structure specifically
41 designed, constructed, and used for housing, raising, or feeding
42 animals or for housing equipment necessary for one of these
43 commercial activities. The exemption also applies to
44 commercially manufactured equipment, and parts and
45 accessories for the equipment, used in the enclosure or a
46 structure.

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

4 (b) Conditional Exemption. – A person who does not meet the definition of a
5 qualifying farmer in subsection (a) of this section may apply to the Department for a
6 conditional exemption certificate under G.S. 105-164.28A. A person with a conditional
7 exemption certificate is allowed to purchase items exempt from sales and use tax to the
8 same extent as a qualifying farmer under subsection (a) of this section. To receive a
9 conditional exemption certificate under this subsection, the person must certify that the
10 person intends to engage in farming operations, as that term is described in subsection
11 (a) of this section, and that the person will timely file State and federal income tax
12 returns that reflect income and expenses incurred from farming operations during the
13 taxable years that the conditional exemption certificate applies.

14 A conditional exemption certificate issued under this subsection is valid for the
15 taxable year in which the certificate is issued and the following two taxable years,
16 provided the person to whom the certificate is issued provides copies of applicable State
17 and federal income tax returns to the Department within 90 days following the end of
18 each taxable year covered by the conditional exemption ~~certificate.~~certificate and
19 provided the person is engaged in farming operations. A conditional exemption
20 certificate issued under this subsection may not be extended or renewed beyond the
21 original three-year period. The Department may not issue a conditional exemption
22 certificate to a person who has had a conditional exemption certificate issued under this
23 subsection during the prior 15 taxable years.

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

39 (c) Contract with a Farmer. – A qualifying item listed in subdivisions (5), (8),
40 and (9) of subsection (a) of this section purchased to fulfill a contract with a person who
41 holds a qualifying farmer exemption certificate or a conditional farmer exemption
42 certificate issued under G.S. 105-164.28A is exempt from sales and use tax to the same
43 extent as if purchased directly by the person who holds the exemption certificate. A
44 contractor that purchases one of the items allowed an exemption under this section must
45 provide an exemption certificate to the retailer that includes the name of the agricultural

1 exemption certificate holder and the agricultural exemption certificate number issued to
2 that holder.

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

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

10 **SECTION 14.** G.S. 105-164.16A, as enacted by S.L. 2014-3, reads as
11 rewritten:

12 "**§ 105-164.16A. Reporting ~~option~~ for prepaid meal plans.**

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

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

37 (b) Basis of Reporting. – A retailer must report gross receipts derived from a
38 prepaid meal plan on an accrual basis of accounting for purposes of this Article,
39 notwithstanding that the retailer reports tax on the cash basis for other sales at retail and
40 notwithstanding that the revenue has not been recognized for accounting purposes."

41 **SECTION 15.** G.S. 105-164.29(a), as amended by Section 14.9(b) of S.L.
42 2014-3, reads as rewritten:

43 "(a) Requirement and Application. – Before a person may engage in business as a
44 retailer or a wholesale merchant or when a facilitator is liable for tax under
45 G.S. 105-164.4F, the person must obtain a certificate of registration. To obtain a
46 certificate of registration, a person must register with the Department. A person who has

1 more than one business is required to obtain only one certificate of registration for each
2 legal entity to cover all operations of each business throughout the State. An application
3 for registration must be signed as follows:

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

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

7 (2a) By a manager, member, or partner, if the owner is a partnership.

8 (3) By an executive officer or some other person specifically authorized
9 by the corporation to sign the application, if the owner is a corporation.
10 If the application is signed by a person authorized to do so by the
11 corporation, written evidence of the person's authority must be
12 attached to the application."

13 **SECTION 16.** G.S. 105-241.6(b)(5) reads as rewritten:

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

16 ...

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

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

25 ~~b. For purposes of this subdivision, For purposes of this~~
26 ~~subdivision, a~~ "contingent event" means litigation or a ~~State~~
27 ~~state~~ tax audit initiated prior to the expiration of the statute of
28 limitations under subsection (a) of this section, the pendency of
29 which prevents the taxpayer from possessing the information
30 necessary to file an accurate and definite request for a refund of
31 an overpayment under this Chapter.

32 ~~e. For purposes of this subdivision, "notice to the Secretary"~~
33 ~~means written notice~~ The written notice to the Secretary must
34 be filed with the Secretary prior to expiration of the statute of
35 limitations under subsection (a) of this section for a return or
36 payment in which a contingent event prevents a taxpayer from
37 filing a definite request for a refund of an overpayment. The
38 notice must identify and describe the contingent event, identify
39 the type of tax, list the return or payment affected by the
40 contingent event, and state in clear terms the basis for and an
41 estimated amount of the overpayment.

42 ~~d.b. A~~ If a taxpayer ~~who~~ contends that an event or condition other
43 than ~~litigation or a State tax audit~~ a contingent event, as defined
44 in this subdivision, has occurred that prevents the taxpayer from
45 filing an accurate and definite request for a refund of an
46 overpayment within the period under subsection (a) of this

1 ~~section~~ section, the taxpayer may submit a written request to the
2 Secretary seeking an extension of the statute of limitations
3 allowed under this subdivision. The request must establish by
4 clear, convincing proof that the event or condition is beyond the
5 taxpayer's control and that it prevents the taxpayer's timely
6 filing of an accurate and definite request for a refund of an
7 overpayment. The request must be filed within the period under
8 subsection (a) of this section. The Secretary's decision on the
9 request is final and is not subject to administrative or judicial
10 review.

11 **SECTION 17.(a)** G.S. 105-338(c), as amended by Section 11.1(e) of S.L.
12 2014-3, reads as rewritten:

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

15 ...

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

23 **SECTION 17.(b)** G.S. 105-339, as amended by Section 11.1(f) of S.L.
24 2014-3, reads as rewritten:

25 "**§ 105-339. Certification of appraised valuations of nonsystem property and**
26 **locally assigned rolling stock, tangible personal property of tower**
27 **aggregator companies, and ~~certain~~ tangible personal property of mobile**
28 **telecommunications companies.**

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

41 **SECTION 17.(c)** Section 11.1(g) of S.L. 2014-3 is repealed.

42 **SECTION 17.(d)** Subsection (c) of this section is effective when it becomes
43 law. The remainder of this section is effective for taxes imposed for taxable years
44 beginning on or after July 1, 2015.

45 **SECTION 18.(a)** G.S. 160A-206 reads as rewritten:
46 "**§ 160A-206. General power to impose taxes.**

1 (a) Authority. – A city shall have power to impose taxes only as specifically
2 authorized by act of the General Assembly. Except when the statute authorizing a tax
3 provides for penalties and interest, the power to impose a tax shall include the power to
4 impose reasonable penalties for failure to declare tax liability, if required, or to impose
5 penalties or interest for failure to pay taxes lawfully due within the time prescribed by
6 law or ordinance. In determining the liability of any taxpayer for a tax, a city may not
7 employ an agent who is compensated in whole or in part by the city for services
8 rendered on a contingent basis or any other basis related to the amount of tax, interest,
9 or penalty assessed against or collected from the taxpayer. The power to impose a tax
10 shall also include the power to provide for its administration in a manner not
11 inconsistent with the statute authorizing the tax.

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

16 (1) Supplying piped natural gas.

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

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

20 (4) Providing electricity."

21 **SECTION 18.(b)** G.S. 153A-146 reads as rewritten:

22 **"§ 153A-146. General power to impose taxes.**

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

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

36 (1) Supplying piped natural gas.

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

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

40 (4) Providing electricity."

41 **SECTION 19.** The Department of Revenue may draw the funds needed to
42 make the following distributions from the sales and use tax collections under Article 5
43 of Chapter 105 of the General Statutes:

44 (1) The September 15, 2014, distribution of the franchise tax to cities
45 under G.S. 105-116.1 for the calendar quarter than begins April 1,
46 2014.

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

SECTION 20.(a) G.S. 105-153.3 reads as rewritten:

"§ 105-153.3. Definitions.

The following definitions apply in this Part:

...

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

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

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

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

SECTION 20.(b) G.S. 105-153.5(a)(1) reads as rewritten:

"(a) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may deduct from adjusted gross income either the standard deduction amount provided in subdivision (1) of this subsection or the itemized deduction amount provided in subdivision (2) of this subsection that the taxpayer claimed under the Code. In the case of a married couple filing separate returns, a taxpayer may not deduct the standard deduction amount if the taxpayer or the taxpayer's spouse claims the itemized deductions amount:

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

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

SECTION 20.(c) G.S. 105-134.1 reads as rewritten:

"§ 105-134.1. Definitions.

The following definitions apply in this Part:

...

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

...."

SECTION 20.(d) G.S. 105-134.6(a2) reads as rewritten:

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

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

number of additional amounts that the taxpayer claimed under the Code for the taxable year.

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

SECTION 20.(e) Subsections (a) and (b) of this section are effective for taxable years beginning on or after January 1, 2014. Subsections (c) and (d) of this section are effective retroactively for taxable years beginning on or after January 1, 2012, and before January 1, 2014. The remainder of this section is effective when it becomes law.

SECTION 21. G.S. 105-164.13B(a)(4) reads as rewritten:

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

- ...
- (4) Prepared food, other than bakery items sold without eating utensils by an artisan bakery. The term "bakery item" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas. An artisan bakery is a bakery that meets all of the following requirements:
- It derives over eighty percent (80%) of its gross receipts from bakery items.
 - Its annual gross receipts, combined with the gross receipts of all related ~~persons as defined in G.S. 105-163.010, persons,~~ do not exceed one million eight hundred thousand dollars (\$1,800,000). For purposes of this subdivision, the term "related person" means a person described in one of the relationships set forth in section 267(b) or 707(b) of the Code."

SECTION 22.(a) G.S. 105-153.4 reads as rewritten:

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

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

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

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

7 (d) S Corporations and Partnerships. – In order to calculate the numerator of the
8 fraction provided in subsection (b) of this section, the amount of a shareholder's pro rata
9 share of S Corporation ~~income—~~income, as modified in G.S. 105-153.5 and
10 G.S. 105-153.6, that is includable in the numerator is the shareholder's pro rata share of
11 the S Corporation's income attributable to the State, as defined in G.S. 105-131(b)(4). In
12 order to calculate the numerator of the fraction provided in subsection (b) of this section
13 for a member of a partnership or other unincorporated business that has one or more
14 nonresident members and operates in one or more other states, the amount of the
15 member's distributive share of the total net income of the ~~business—~~business, as modified
16 in G.S. 105-153.5 and G.S. 105-153.6, that is includable in the numerator is determined
17 ~~by multiplying the total net income of the business by the ratio ascertained under the in~~
18 accordance with the provisions of G.S. 105-130.4. As used in this subsection, total net
19 income means the entire gross income of the business less all expenses, taxes, interest,
20 and other deductions allowable under the Code that were incurred in the operation of the
21 business.

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

25 **SECTION 22.(b)** G.S. 105-153.5 is amended by adding a new subsection to
26 read:

27 "(c1) Other Additions. – S Corporations subject to the provisions of Part 1A of this
28 Article, partnerships subject to the provisions of this Part, and estates and trusts subject
29 to the provisions of Part 3 of this Article must add any amount deducted under section
30 164 of the Code as state, local, or foreign income tax."

31 **SECTION 22.(c)** This section is effective for taxable years beginning on or
32 after January 1, 2015.

33 **SECTION 23.(a)** G.S. 105-164.13, as amended by Section 6.1(f) of S.L.
34 2014-3, reads as rewritten:

35 "**§ 105-164.13. Retail sales and use tax.**

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

39 ...

40 (62) An item used to maintain or repair tangible personal property or a
41 motor vehicle pursuant to a service contract taxable under this Article
42 if the purchaser of the contract is not charged for the item. ~~This~~
43 ~~exemption does not apply to an item used to maintain or repair~~
44 ~~tangible personal property pursuant to a service contract exempt from~~
45 ~~tax under G.S. 105-164.4I(b).~~ For purposes of this exemption, the term
46 "item" does not include a tool, equipment, supply, or similar tangible

1 personal property used to complete the maintenance or repair and that
2 is not deemed to be a component or repair part of the tangible personal
3 property or motor vehicle for which a service contract is sold to a
4 purchaser."

5 **SECTION 23.(b)** G.S. 105-187.52(c) reads as rewritten:

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

10 **SECTION 23.(c)** Notwithstanding G.S. 105-164.13(62), as amended by S.L.
11 2014-3 and by subsection (a) of this section, the sales and use tax exemption in
12 G.S. 105-164.13(62) applies to an item used pursuant to a service contract that meets
13 the definition of a "service contract" as defined in G.S. 105-164.3(38b), notwithstanding
14 that the service contract was sold before January 1, 2014, and effective on, before, or
15 after January 1, 2014.

16 **SECTION 23.(d)** Subsections (a) and (b) of this section become effective
17 October 1, 2014. The remainder of this section is effective when it becomes law.

18 **SECTION 24.** Except as otherwise provided, this act is effective when it
19 becomes law.



Bill Draft 2015-TDxz-5: Revenue Laws Technical Changes.

2013-2014 General Assembly

Committee:

Introduced by:

Analysis of: 2015-TDxz-5

Date:

January 8, 2015

Prepared by:

Finance Team
Committee Counsel

SUMMARY: *This draft incorporates the Revenue Laws technical changes that were circulated during the 2014 Session in Senate Bill 763, House Bill 1224, and House Bill 189, or some combination thereof. These provisions make technical corrections and clarifying changes to the tax statutes largely based on recommendations of the Department of Revenue.*

BACKGROUND: After passage of House Bill 1050 early in the 2014 Session, the companion bill, Senate Bill 763, became the primary vehicle for additional revenue laws technical changes and passed the Senate in late July. However, a number of substantive provisions were added to the bill on the House floor, in which the Senate did not concur. The non-roll call changes were then put into House Bill 1224 and the roll call technical changes were put into House Bill 189. Neither of those bills passed.

EFFECTIVE DATE: Except as otherwise provide, this bill would become effective when the act becomes law.

BILL ANALYSIS:

Section	Explanation and Effective Date
1	<p>This section does two things. First, it clarifies that the changes related to retailer-contractors, which become effective January 1, 2015, are not to be construed to affect the interpretation of any statute that is the subject of a State tax audit for taxable years beginning prior to the effective date of the changes. The prior language referred to "audit pending," which the Department indicated was unclear. The changes made by Part VII of S.L. 2014-3 are not intended to be retroactive, and therefore any audit or litigation resulting derived from an audit for taxable years prior to January 1, 2015 is subject to the statutes and interpretations of the Department for those years.</p> <p>Second, it clarifies the effective date by providing that the changes apply to withdrawals from inventory on or after that date as well as sales since retailer-contractors do both; they make retail sales of items and they withdraw items from inventory that are used in the performance of a real property contract.</p>
2	<p>This section clarifies the conditions under which a retailer is or is not liable for the collection of tax on the rental of private residences rented for fewer than 15 days and listed with a real estate broker during the period in which the Department's Important Notice was in effect and during the 30-day period following the effective date of S.L. 2014-3. The original provision was not specific to the private residence changes but generically referred to the entire</p>

	<p>section, which could have been interpreted to affect the liability of retailers required to collect tax on the rental of accommodations generally.</p> <p>This section becomes effective June 1, 2014.</p>
3	<p>This section repeals an unnecessary provision; Section 14.1 of S.L. 2014-3 made the same change.</p>
4	<p>The Tax Reduction Act, S.L. 2013-316, included electricity and piped natural gas in the State sales tax base while repealing the utility franchise tax on electricity and the excise tax on piped natural gas. Section 4.2(a) of the Act directed the Utilities Commission to adjust the rates of electricity and piped natural gas to reflect the repeal of the utility franchise tax and the excise tax on piped natural gas. The Act also reduced the corporate income tax rate. However, the Act did not direct the Utilities Commission to take any action on utility rates related to the reduction in corporate income tax rates.</p> <p>In May of 2014 the Commission took its first action related to the Act. The Commission issued an order directing utilities to adjust rates to reflect the repeal of the utility franchise tax, the repeal of the excise tax on piped natural gas, and the reduction in the corporate income tax rate. Dominion Power and PSNC Energy both appealed this order, on the grounds that the Act did not direct the Commission to take action related to the reduction in the corporate income tax rate.</p> <p>In October of 2014 the Commission reversed its first order. The Commission authorized the utilities not to reduce their rates related to the changes in the corporate income tax rate, and allowed any utility that had reduced rates for this reason to recover those funds from customers.</p> <p>No utility has taken this step of seeking to recover these funds from customers. Except for Dominion Power, all of the retail electric and piped natural gas utilities are passing on the savings from the reduction in the corporate income tax rates to their customers.</p> <p>This section would clarify the intent of the General Assembly regarding the impact of the Act on utility rates. This draft would direct the Commission to adjust utility rates to reflect the reduction in the corporate income tax rate and would also direct the Commission to impose interest on any refunds issued to utility customers as a result of reduction in the corporate income tax rate.</p>
5	<p>S.L. 2014-3 enacted a new tax on vapor products as part of the current tax on other tobacco products (OTP). This section makes a technical change that allows North Carolina manufacturers of vapor products to collect the new vapor tax on internet retail sales, while allowing the manufacturers to continue to the current practice of applying to the Secretary of Revenue to be relieved of the tax for vapor products shipped to wholesale and retail dealers. The Secretary allows manufacturers to be relieved of paying the tax on OTP when the tax is paid by the wholesale or retail dealer.</p> <p>This section becomes effective June 1, 2015.</p>
6	<p>This section clarifies that the credit may be taken when the property is placed into service in this State. When a renewable energy project is put together,</p>

	there are usually two sets of investors, those that want the federal credit and those that want the State credit. If the lessee is to get the federal credit, it must "place it into service". However, if the lessor wants the State credit, it must "place it into service". As clarified by this section, the lessor may claim the State credit as long as somebody (the lessee) places the property into service.
7	This section incorporates a revision made to G.S. 15-130.5(b)(4) made by Section 14.3 of S.L. 2014-3 so that the changes engross correctly in the codification process.
8	This section clarifies that the phrase "subject to tax under Part 2 or 3 of Article 4" applies to a beneficiary of a transferor. Subsection (a) becomes effective for the 2013 taxable year; subsection (b) becomes effective for the 2014 taxable year.
9	This section provides that neither an individual nor a withholding agent may be penalized for underpayment of income tax for the 2014 taxable year if the reason for the underpayment is the clarification of the law in S.L. 2014-3. S.L. 2014-3 clarified that a person who is not eligible for a federal standard deduction is not eligible for a State standard deduction. A nonresident alien individual is not allowed a standard deduction. This section does not change the effective date of the substantive law change or the amount of tax due and payable.
10	This section clarifies that the term "retailer" is any person required to collect sales tax imposed under G.S. 105-164.4, other than a facilitator. The current definition does not reflect the expansion of the sales tax base to prepaid meal plans, admission charges, piped natural gas, and service contracts.
11	This section makes technical and conforming changes.
12	This section clarifies that the exemption provisions applicable to fuel also include piped natural gas. PNG is considered fuel, but since the imposition of the combined rate of tax for PNG is separate from the general tax imposed on fuel, the Department of Revenue requested this clarifying change.
13	<p>This section does four things. First, it would clarify that a farmer is allowed a sales and use tax exemption for farm-related purchases if the farmer's sales plus other amounts used to determine farm income under the Code exceeds \$10,000. Under current law, the farmer's gross income may be reduced by the farmer's basis of livestock. Under this section, gross sales of livestock would not be reduced by the cost or basis of the livestock sold.</p> <p>Second, it would clarify that the exemption expires <i>upon the earlier of</i> the following: when a person fails to meet the income requirement for three consecutive years or ceases to engage in farming operations. And a new farmer may obtain a conditional exemption provided the person submits applicable income tax returns to the Department <i>and provided</i> the person is engaged in farming operations.</p> <p>Third, it would make a similar clarifying change as made in Section 11 of this bill for the farm exemption for fuel and piped natural gas. It also makes other technical changes suggested by the Department of Revenue.</p>

	<p>Fourth, it would provide that certain tangible personal property purchased to fulfill a contract with a person who holds a farmer exemption certificate or a conditional farmer exemption certificate is exempt to the same extent as if purchased directly by the person who holds the exemption certificate.</p> <p>This section becomes effective July 1, 2014. A contractor who paid sales and use tax on an item exempt from sales and use tax, as enacted by this section, may request a refund from the retailer and the retailer may, upon issuance of the refund or credit, request a refund for overpayment of tax under G.S. 105-153.3.</p>
14	<p>This section does two things:</p> <ul style="list-style-type: none"> • It provides that a retailer who has an agreement with a food service contractor to collect and remit the sales tax on gross receipts derived from a prepaid meal plan is not liable for the tax that the retailer remits to the food service contractor. • It requires a retailer to report gross receipts derived from a prepaid meal plan on an accrual basis of accounting for purposes of reporting sales tax.
15	<p>This section makes a change as to who may apply for a certificate of registration for legal entity so that it is consistent with the changes made in Section 14.18 of S.L. 2014-3 as to who may be liable for unpaid sales tax for a legal entity.</p>
16	<p>This section changes a statute that was not codified as it was intended to be amended by Section 47 of S.L. 2013-414. The section does not change the substance of the subdivision. The change made last session codified the Department's administrative practice of allowing protective refund claims to be filed when an event prevented a taxpayer from having the information necessary to file a request for refund, such as pending litigation or an ongoing income tax audit in another state that may affect the taxpayer's NC tax liability.*</p>
17	<p>Part XI of S.L. 2014-3 established a procedure for the central assessment of mobile telecommunications property. The intent of this Part was to shift the responsibility for conducting the valuations of this particular kind of property from the individual counties to the Department of Revenue without creating any "winners" or "losers" in terms of the values allocated to the counties. This section makes minor modifications to that Part to ensure that there is no shifting of value among counties as a result of the change.</p> <p>The Department appraises this property at its "true value," which includes consideration of its original cost but with deductions made for all forms of depreciation to arrive at the property's fair market value. However, under S.L. 2014-3, the allocation of the value among the counties in which the property is located would have been based only on original cost. Using original cost would have had the effect of overinflating the value allocated to</p>

* Generally speaking, there is a time limit within which a taxpayer may file a claim for refund. If the claim for refund is not timely filed, it will be barred. The Department has administratively allowed for a taxpayer in these circumstances to file a timely but incomplete claim for refund, known as a "protective refund claim," and then later perfect the claim when the essential information becomes available.

	<p>a particular county and decreasing the value allocated to other counties. This section provides that once the Department determines the value of the property, it will be allocated among the counties based on where the property is located.</p>
18	<p>Cities have historically been prohibited from imposing a license, franchise, or privilege tax on certain utility-related businesses, such as telecommunications, video programming, and electricity. With the repeal of G.S. 160A-211, effective July 1, 2015, the specific prohibition language would also be repealed.</p> <p>While cities only have the power to tax or charge a fee to the extent the legislature has granted them the authority to do so, and the repeal of this prohibition is not necessarily a grant of authority otherwise, the utilities industry has concerns about the deletion of the prohibition as it relates to rights-of way and has requested that the language be kept in the statutes. This section recodifies the language in a more appropriate place in the statutes.</p>
19	<p>S.L. 2013-316, included electricity and piped natural gas in the State sales tax base while repealing the utility franchise tax on electricity and the excise tax on piped natural gas. A portion of both of the repealed taxes was shared with the cities. The tax-sharing revenue under the repealed taxes was replaced with a distribution of part of the sales tax on electricity and piped natural gas. This section clarifies that funds from the sales tax may be used for the final distribution of the repealed franchise tax on electricity and repealed excise tax on piped natural gas.</p>
20	<p>This section conforms to federal law, and codifies the current practice, of providing the same standard deduction amount for a surviving spouse as for a married couple filing jointly. Subsections (a) and (b) make the necessary changes to the tax statutes effective for taxable years beginning on or after January 1, 2014. Subsections (c) and (d) make the same change for taxable years 2012 and 2013. When North Carolina used federal taxable income as its starting point, a specific reference to "surviving spouse" was not necessary because the amount of the standard deduction was automatically a part of that calculation. However, with the change in the 2012 taxable year to federal adjusted gross income, this conforming provision was inadvertently omitted.</p>
21	<p>This section removes a reference to a repealed statute, and incorporates the definition that was referenced in the repealed statute.</p>
22	<p>Subsection (a) of this section would remove reference to a repealed statute and clarify in the personal income tax statutes that income of a partnership that is apportionable to multiple states is allocated and apportioned in accordance with G.S. 105-130.4. Income that is not apportionable should be allocated to the appropriate state. The current statute refers to a ratio rather than to the rules of allocation and apportionment.</p> <p>For State income tax purposes, subsection (b) of this section would require S Corps, partnerships, estates and trusts to add back State income tax that was deducted from federal income. Prior to S.L. 2013-316, the statutory requirement for the add-back for S Corporations, partnerships, estates and</p>

	<p>trusts was a cross reference to the individual requirement. When the individual requirement was repealed, add-back for S Corporations, partnerships, estates and trusts requirement was erroneously repealed as well.[†]</p> <p>This section becomes effective for taxable years beginning on or after January 1, 2015.</p>
23	<p>Subsection (a) of this section would clarify that the exemption for items used to maintain or repair tangible personal property applies to those items used pursuant to a service contract subject to sales tax. If the service contract is not subject to tax, then the item used to maintain or repair the property is subject to tax. Subsection (b) of this section would make a conforming change in Article 5F regarding the treatment of items used in a service contract. These subsections would become effective when the act becomes law.</p> <p>Subsection (c) of this section would provide that the exemption applies, regardless of when the service contract was purchased. It would be difficult for a person to know, when a service is performed pursuant to a service contract, whether the service contract was purchased before or after January 1, 2014.</p>

[†] This requirement was repealed for individual filers in S.L. 2013-316, when the itemized and standard deduction was changed for individual filers.

APPENDIX A

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

**ALL MATERIALS DISTRIBUTED AT MEETINGS MAY BE
VIEWED ON THE COMMITTEE'S WEBSITE:
<http://www.ncleg.net/committees/revenuelaws>**

ARTICLE 12L

Revenue Laws Study Committee

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

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

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

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

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

§ 120-70.106. Purpose and powers of Committee.

(a) The Revenue Laws Study Committee may:

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

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

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

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

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

The Committee must review the impact of this Article on these issues every two years and report its findings to the North Carolina General Assembly. The Committee must make its first report to the 2008 Session of the North Carolina General Assembly. (1997-483, s. 14.1; 2006-151, s. 21.)

§ 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

DISPOSITION OF COMMITTEE'S RECOMMENDATIONS TO THE 2014 REGULAR SESSION OF THE 2013 GENERAL ASSEMBLY

**ALL MATERIALS DISTRIBUTED AT MEETINGS MAY BE
VIEWED ON THE COMMITTEE'S WEBSITE:
<http://www.ncleg.net/committees/revenuelaws>**

**DISPOSITION OF REVENUE LAWS STUDY COMMITTEE RECOMMENDATIONS
TO THE 2014 REGULAR SESSION OF THE 2013 GENERAL ASSEMBLY**

SHORT TITLE	SENATE SPONSORS	HOUSE SPONSORS	BILL #	FINAL STATUS*
Omnibus Tax Law Changes		Howard W Brawley Lewis Setzer	HB 1050	Enacted* SL 2014-3

* Bills were modified prior to enactment.

APPENDIX C

MEETING AGENDAS

**ALL MATERIALS DISTRIBUTED AT MEETINGS MAY BE
VIEWED ON THE COMMITTEE'S WEBSITE:
<http://www.ncleg.net/committees/revenuelaws>**

Next Meeting Date:
in Room 544, LOB, at 9:30 a.m.

Next Meeting Date:
in Room 544, LOB, at 9:30 a.m.

**Next Meeting Date: Tuesday,
in Room 544, LOB, at 9:30 a.m.**

Next Meeting Date:
in Room 544, LOB, at 9:30 a.m.

Next Meeting Date:
in Room 544, LOB, at 9:30 a.m.

Next Meeting Date:
in Room 544, LOB, at 9:30 a.m.

Next Meeting Date:
in Room 544, LOB, at 9:30 a.m.